

IN THE MATTER OF THE TENURE :
HEARING OF RONALD RICHARDSON, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF PATERSON, PASSAIC :
COUNTY. :
_____ :

SYNOPSIS

District certified tenure charges of abandonment of position, unbecoming conduct, excessive absenteeism and insubordination against respondent elementary teacher.

In light of testimony of witnesses and evidence on record, the ALJ determined that Charge one (abandonment of position) should be dismissed. ALJ determined that Charge Two (excessive absenteeism) had been proven by a preponderance of credible evidence, as had Charge Three (insubordination) with respect to respondent's failure to call in to the sub tape when he was going to be absent, failure to prepare for substitute teachers and failure to follow directives regarding progress reports and report cards. ALJ noted that the District's evidence with regard to the excessive absence charge, standing alone, justified removal from his position. Moreover, on various occasions, respondent was reminded of his obligations and cautioned against his failure to abide by them; yet, he continued to ignore his responsibilities. ALJ ordered respondent dismissed from his position.

Commissioner adopted findings and determination in initial decision as his own. Commissioner ordered respondent dismissed from his tenured position as of the date of this decision and the matter was referred to the State Board of Examiners for further action as it deems appropriate.

JULY 15, 1998

IN THE MATTER OF THE TENURE :
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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Respondent’s exceptions are duly noted as submitted in accordance with *N.J.A.C. 1:1-18.4*.¹

Respondent contends on exception that: (1) the District has failed to prove by a preponderance of credible evidence that his absences were excessive; (2) contrary to the Administrative Law Judge’s (ALJ) finding, there was no evidence that substitute plans (hereinafter “sub plans”) were *never* found; (3) the record does not support the ALJ’s finding (at page 27 of the initial decision) that respondent failed to prepare progress reports and report cards and was reprimanded for such; (4) the ALJ improperly shifted the burden of proof to respondent when he found that respondent could have called Williams as a witness and subpoenaed the sub tape² and erroneously found that Ms. Gallina “had no recollection of ever obtaining Richardson’s

¹ The District’s reply was untimely filed, in that it exceeded the time limit imposed by *N.J.A.C. 1:1-18.4(d)*; yet, the District failed to request an extension of this time limit from the agency, in accordance with *N.J.A.C. 1:1-18.8*.

² Term refers to the telephone answering machine which the District utilizes to receive calls from staff who will be absent and will require a substitute.

name from the central office where she made these calls" (initial decision at p. 20); and (5) dismissal is an inappropriate penalty in this matter.

Upon careful and independent review of the record, which included transcripts from the six days of hearings conducted in this matter, the Commissioner concurs that the District has proven that respondent's absences were, indeed, excessive and his conduct toward the administrators who sought accountability for his behavior was, at best, highly unprofessional.

As the ALJ aptly notes,

***Richardson clearly should have known better and essentially he "walked away" from his teaching obligations to the frustration of his superiors, the disgust of the parents of children in his class and to the very real detriment of those students insofar as *their right* to receive continuity of instruction is concerned. In short, Richardson's conduct insofar as his excessive absences [are] concerned was deplorable. (emphasis in text) (Initial Decision at p. 26)

With respect to the insubordination charge, the Commissioner concurs with the ALJ that the District has proven said charge, in part, by establishing respondent's failure to report his intended absences on numerous dates, in violation of District policy and despite warnings to do so, and by establishing respondent's failure to submit sub plans, progress reports, and report cards in accordance with established timelines. (Initial Decision at p. 28)

Here, the Commissioner finds that the record supports the ALJ's findings regarding the lack of available sub plans, noting in particular the testimony of Principal Rivera (Tr. 11/17/97 at p. 206) and Ms. Hendricks (Tr. 3/11/98 at p. 86). Respondent's testimony was simply inconsistent in this regard. At times, he insisted that the plans were always available (Tr. 1/28/98 at p. 109) and at times he qualified his assertion by noting that he maintained the sub plans "[a]s I was there" (*id.*), or "If I were there and the plans were due on that date, yes, I did submit them" (Tr. 3/10/98 at p. 108). Respondent even seemed to suggest that his plan book could suffice for a substitute plan when he stated,

***Basically, what my sub plans are are my plans from my plan book if I were to be absent, as if – I said before, if I was absent for an extensive point in time the plans were redundant to the plan book. (*Id.* at p. 111)

Later, however, when questioned by the ALJ about the procedure for leaving sub plans which did not coincide with daily lesson plans and objectives, respondent explained that sub plans *need not* correspond with the daily lesson plans (and plan book) for a teacher, but are designed to be supplemental exercises and activities for substitutes to employ in a teacher's absence. Respondent then stated,

***So even if I'm not there, although we may not be on that particular subject, we had covered that particular subject at one point in time, but the kids had that experience. ***

The sub plans that I use is material that is not used at all during that course of time that I was there. *** For example, we're doing – I know we had multiple choice at one point in time. I'm not going to give a page out of the mathematics book. I have like a ditto or worksheet that dealt with multiple choice, and that will be my sub plan. (*Id.* at pp. 118-120)

In any event, no one *other than respondent* testified to having seen the sub plans.

Further, respondent readily conceded that he only prepared report cards for the first marking period, and even these were submitted to his principal in an untimely fashion. (Tr. 1/28/98 at pp. 130, 131) As to the preparation of progress reports, respondent testified, "I only done the first and the sec – first marking period, or both. The report card and supplementary notice." (*Id.* at p. 132; Tr. 3/10/98 at p. 127) Whether, in fact, respondent was ever formally reprimanded for failing to submit report cards and progress reports, as he so contends, is, under these circumstances, without consequence, since respondent cannot credibly claim that he was unaware of his duty to do so. As the ALJ noted, "How a tenured teacher like

Richardson simply can ignore such an important aspect of the school-home relationship defies comprehension.” (Initial Decision at p. 27)

As to the issue of respondent’s failure to report his intended absences, Principal Rivera testified that there were two methods of reporting intended absences: (1) by contacting Ms. Williams and leaving a message for the central office on the sub tape, which message would later be conveyed to Public School No. 28 via Diane Gallina, and (2) by contacting Public School No. 28 *directly*. (Tr. 11/17/97 at p. 201) Ms. Rivera further testified that the District asks staff members to please call the designated person *in each school* to report an intended absence, in that the central office tape method sometimes results in delay and failure to secure timely coverage. (*Id.* at pp. 201, 202) Respondent admits that he never called Public School No. 28 to report his absence, and never understood that it was his duty to do so, notwithstanding that he received a memorandum from Ms. Rivera underscoring the need for him to call in his absences. (Tr. 3/10/98 at p. 75; P-2)

Moreover, Ms. Rivera testified that she learned from Ms. Gallina whether a teacher had called in to the sub tape, and “[m]ost of the time” respondent failed to call in to the tape when he was, in fact, absent. (Tr. 11/17/97 at pp. 202, 203) Additionally, Ms. Gallina testified that she spoke with Principal Rivera on 20 or 30 occasions about respondent’s failure to call in. (Tr. 11/21/97 at p. 27) That Ms. Gallina was unable to specify the particular dates in the 1996-97 school year when respondent failed to call in does not, the Commissioner finds, necessarily undermine the validity of her testimony. (*Id.* at p. 35)

Moreover, the Commissioner finds no cause to disturb the ALJ’s finding that respondent’s testimony on this issue was not credible. Notwithstanding his consistent assertions that he diligently called in to the sub tape prior to an absence, respondent admitted that Principal Rivera spoke to him about his *failing to do so*, (Tr. 3/10/98 at p. 78), a contradiction

which was never explained. Further, the Commissioner finds that respondent's absolute recall when it came to the issue of his calling the sub tape strains credibility, given his cloudy recollection of such important issues as meetings with his principal, (Tr. 3/10/98 at pp. 64, 67, 81, 131), his attendance at parent conferences (*id.* at pp. 86-91), when substitute plans were submitted for the months of January and February 1997 (*id.* at pp. 104, 105, 110), the location of his original lesson plan book (*id.* at p. 112), and the issuance of the progress reports he claims to have prepared (*id.* at p. 127). Thus, it was not improper for the ALJ to give greater weight to the testimony of the District.³ The Commissioner specifically rejects respondent's contention that the ALJ shifted the burden of proof on this issue of the sub tape.

Accordingly, concurring that the District has proven the charges of excessive absenteeism and insubordination, in part, the initial decision of the ALJ recommending a penalty of dismissal is affirmed, for the reasons expressed by him, and augmented above.⁴ Respondent is dismissed from his tenured teaching position with the District as of the date of this decision. This matter is further referred to the State Board of Examiners pursuant to *N.J.A.C.* 6:11-3.6 for action against his certificate as it deems appropriate.⁵

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JULY 15, 1998

³ It is also noted that respondent testified that he *did not recall receiving*, or never received, numerous documents from the District, as found at Exhibits P-7, P-8, P-10, P-19, P-20, P-21, P-22, P-23, P-23A, P-23B and P-24.

⁴ In so finding, the Commissioner specifically notes his agreement with the ALJ's conclusion that the District's evidence with respect to the excessive absence charge, standing alone, justifies removal of respondent's tenure. (Initial Decision at p. 28)

⁵ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.