

IN THE MATTER OF THE TENURE :
HEARING OF CONSTANCE JONES, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
_____ :

SYNOPSIS

District certified tenure charges of excessive absenteeism, incapacity and insubordination against respondent teacher.

ALJ concluded that the District sustained its burden of proving the tenure charges by a preponderance of competent evidence. ALJ found that respondent was not protected by the Law Against Discrimination (LAD) by virtue of her inability to perform adequately essential duties of a teacher. Moreover, the ALJ found that she was not protected by the Americans with Disabilities Act (ADA) based on the hardship of the employer in finding appropriate substitutes and the hardship to students whose instruction was interrupted. ALJ ordered respondent terminated from her employment as an elementary teacher of special education.

Commissioner adopted findings and determination in initial decision. Commissioner ordered respondent dismissed from her employment as of the date of this decision and directed the matter be forwarded to the State Board of Examiners for further appropriate action.

March 6, 1998

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The record of this matter, including transcripts of the hearing conducted by the Administrative Law Judge (ALJ), and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Respondent raises numerous objections, but essentially renews her contention that she is a handicapped individual by virtue of her addiction and the District, by seeking to terminate her, has not "reasonably accommodated" her handicap as required under New Jersey's Law Against Discrimination (LAD), *N.J.S.A.* 10:5-1 *et seq.*, and its federal counterpart, the Americans with Disabilities Act (ADA), 42 USC s.12101 *et seq.* Respondent also cites to the "reasonable accommodation regulation," set forth at *N.J.A.C.* 13:13-2.5(b), which provides that "****an individual who has a handicap is entitled to be reasonably accommodated by his/her employer for that particular handicap [and to be given] another chance**** should he/she be an alcoholic and/or drug addict." (Respondent's Exceptions at p. 13)

Respondent also identifies several findings of fact that were reached by the ALJ which she avers are erroneous in that they are not supported by testimony. (*Id.* at p. 2) She further lists findings that are lacking in the initial decision, asserting they are supported in the record, undisputed, and critical to a proper resolution of the within matter. (*Id.* at p. 5) Respondent's comments in this regard, as well the additional arguments presented by her in 28 pages of exceptions, are duly noted and were considered by the Commissioner in rendering the within decision.

Upon a careful and independent review, the Commissioner concurs with the findings and conclusions of the Administrative Law Judge (ALJ) that the Board has proven its charges against respondent by a preponderance of competent evidence and that her termination from employment is warranted, pursuant to *N.J.S.A.* 18A:6-10 and 11. The Commissioner finds that the initial decision squarely addressed the exception arguments raised by respondent with regard to her charge that the Board failed to offer her a reasonable accommodation to the limitations of her handicap. The Commissioner is further satisfied that the findings of fact set forth in the initial decision support the ALJ's conclusions and need not be supplemented, in that they constitute the material facts necessary for decision in this matter and were reached by the trier of fact who was in the optimum position to consider all testimony and weigh its content according to the credibility of the witnesses. In this latter regard, respondent has presented no cause to challenge the ALJ's credibility determinations. See *In the Matter of Raymond Morrison*, 216 *N.J. Super.* 143 (App. Div. 1987). Finally, the ALJ's recommendation herein is consistent with prior Commissioner's decisions and other case law addressing the LAD. See, for example, *IMO Cahill*, 245 *N.J. Super.* 397 (App. Div. 1991); *IMO Tenure Hearing of Edward Kozik, School District of the Township of West Deptford*, 96 *N.J.A.R.* 2d (EDU) 335; *IMO Tenure Hearing of Sondra Yanniello, Bd. of Ed. of the City of Millville*, 95 *N.J.A.R.* 2d (EDU) 262; and *IMO Tenure Hearing of Dorothy Howard, State-operated School District of Jersey City*, 93 *N.J.A.R.* 2d (EDU) 788.

Accordingly, for the reasons expressed therein, the Commissioner affirms the initial decision of the OAL and orders that respondent be dismissed from her tenured employment as of the date of this decision. Additionally, this matter is hereby forwarded to the State Board of Examiners for action as it deems appropriate pursuant to *N.J.A.C.* 6:11-3.6.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 6, 1998

* 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.