32-99

| IN THE MATTER OF THE TENURE | : | |
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| HEARING OF JIMMY DYKES, | : | COMMISSIONER OF EDUCATION |
| STATE-OPERATED SCHOOL | : | DECISION |
| DISTRICT OF THE CITY OF NEWARK, | : | |
| ESSEX COUNTY. | : | |
| ___________________________________ | : | |

SYNOPSIS

District certified tenure charges of unbecoming conduct against respondent physical education teacher for allegedly participating in a scheme to defraud the State Health Benefits Program (SHBP) by conspiring with a doctor to submit claims for psychological services purportedly rendered.

ALJ determined that the record clearly supported a conclusion that respondent was aware of the improprieties and he knowingly and willingly engaged in conduct intended to defraud the SHBP by referring the doctor to his wife despite misgivings, by allowing false claims for services to remain unchallenged and by failing to act to rectify the situation. Thus, the ALJ concluded that the District sustained its burden of proving the charges by a preponderance of evidence. Moreover, because of the seriousness of the charges, the ALJ concluded that dismissal was warranted. ALJ ordered respondent terminated from his tenured employment.

Upon careful and independent examination and study of the record, including the parties exception arguments and the transcripts of the hearing, the Commissioner determined to affirm the conclusion of the ALJ, explicating upon the initial decision, that the District established its charge of unbecoming conduct on the part of the within respondent necessitating his removal from his tenured position. Commissioner concluded that the District established said charge as the quality of the evidence herein leads a cautious mind to the conclusion that respondent engaged in knowing and intentional participation in conduct with a purpose to defraud. Moreover, despite respondent's apparently unblemished 13-year record, the Commissioner determined that the charge established herein, under the particular circumstances of this matter, was sufficiently flagrant to warrant respondent's dismissal. (*Redcay*) Commissioner ordered respondent dismissed from his tenured position as of the date of this decision and transmitted the matter to the State Board of Examiners for action, as that body deems appropriate.

FEBRUARY 11, 1999

OAL DKT. NO. EDU 1747-97
AGENCY DKT. NO. 584-12/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of respondent and the District's reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

Respondent's extensive exceptions initially contend that the Administrative Law Judge's (ALJ) initial decision "is fraught with clear legal and factual errors that cannot legally or fairly form the basis of respondent's removal." (Respondent's Exceptions at p. 6) Although agreeing that the ALJ's Findings of Fact (initial decision at p. 3) are supported by the record, he avers that "strewn throughout her 'Discussion' and 'Conclusion,' are a series of factual findings [which are] not supported by the record." (*Id.*) Respondent presents and discusses, what he asserts are six such erroneous findings:

1. <u>Jimmy Dykes knew of Lichtman's scheme immediately upon knowledge of and contact with Lichtman.</u>

Respondent asserts that the ALJ erroneously finds "the record is clear that [respondent] was uncomfortable with the scheme initially when he heard about it from his friend Kearson and after he spoke to Lichtman." (Initial Decision at p. 4) Respondent urges that such a finding is clearly

contrary to the record. He cites what he asserts is his uncontroverted testimony that he believed that Lichtman was conducting a study or a program. Such a thesis, he argues, is corroborated by the Certification of Rossi Kearson (Exhibit R-5). Respondent additionally provides specific transcript citations which, he maintains, confirm that he repeatedly testified "that his discomfort with Lichtman related only to the actual mechanics of what he initially and fairly believed to be Lichtman's legitimate program/study." (Respondent's Exceptions at p. 7)

2. Jimmy Dykes' "sworn statement" regarding the fact that Lichtman spoke to subjects by telephone supports the conclusion that Mr. Dykes knew of Lichtman's scheme.

Here, respondent argues that in relying heavily on Exhibit P-2, respondent's sworn statement to investigators, wherein it is stated that Kearson told him "he knew of a psychiatrist that you could have a couple of sessions with over the phone and after speaking with the doctor several times you would receive [sic] a check" (initial decision at p. 4)," the ALJ fully ignored her own conclusion (*id.* at p. 5) that such statement was a "synthesis drawn up by an investigator of both Jimmy Dykes and Mrs. Dykes' statements." (Respondent's Exceptions at p. 7) Respondent further contends, citing hearing transcripts in support of such contention, "both Mr. and Mrs. Dykes testified repeatedly that this statement does not represent the exact words used by them at the time of the investigation," (*id.* at p. 9), a fact that he maintains the ALJ recognized both on the record (Transcript 7/23/98, 32/5-9), and in her initial decision at page 5. (*Id.*)

Even more significant, respondent argues, the ALJ stated that the investigator's statement should be accepted verbatim because "counsel for respondent never questioned respondent regarding the accuracy of this portion of the written statement. (Decision, p. 5)" (Respondent's Exceptions at p. 8) This, he asserts, is totally inaccurate and a grievious misapprehension of the record pointing out that the transcript reflects the following colloquy:

Q. Did you tell Investigator Binn the nature of the conversation [with Rossi Kearson]?

A. Yes.

Q. Okay.

A. I recall telling her, yes.

Q. Okay. Is there anything here that you would like to correct about the con -- I'm sorry, the -- interaction that you had with Rossi Kearson?

(Whereupon, there is a brief pause in the proceedings.)

A. Yes. There's a part where Kearson -- Can I read it, the part where --

Q. Surely.

A. -- I'm talking about.

Q. Um-hum.

A. [The investigator's statement] says Kearson telephoned me at home and said that he knew of a psychiatrist that you can have a couple of sessions with over the phone and after speaking with the Doctor several times you would receive a check.

That makes it seem like it's an ongoing type of a conversation. And it -- it wasn't.

What I was trying to say is that Kearson was telling me -- he was saying to contact the Doctor and you need to talk with him a couple of times to find out exactly what was going on. And if you were eligible to participate in this -- this workshop or study or whatever, you would meet with the Doctor several times and then you would receive a check.

In here it says that you can have a couple of sessions with, over the phone, and after speaking -- and I don't know, speaking/meeting but what I was trying to say is after -- and after the couple sessions or interviews with the Doctor several times and you would receive a check. That's what I understood Kearson to tell me. (Transcript of 7/23/98, 34/10 – 35/12) (Respondent's Exceptions at pp. 8-9)

This discourse, respondent argues, evidences that counsel did question him as to this particular portion of the investigator's statement, and that he clearly "repudiated the implication that he agreed to participate in a fraudulent scheme." (*Id.* at p. 9)

Respondent also asks that the Commissioner consider that the District failed to call either of the two investigators who completed the statement as witnesses to controvert the testimony of respondent and his wife. As such, he maintains, "an inference that their testimony would have supported the fact that Jimmy Dykes did not know from the outset that he was

participating in a fraudulent scheme is clearly compelled." (*Id.* at pp. 9-10) Consequently, respondent argues that the ALJ's use of the investigators' statement as a foundation for ordering respondent's termination from employment, without recognizing the statement's significant shortcomings, is totally capricious. Moreover, respondent maintains, it "strains logic and reason" for the ALJ to conclude, that these particular words "evidence respondent's knowing and willing participation in a scheme with Lichtman to defraud the State Health Benefits Program." *Id.* at p. 10) He reasons, that if there is something untoward about participating in a study by telephone, it was the District's burden to bring forth evidence in this regard, which it failed to do.

In summary on this particular point, respondent avers

> ***not only did the ALJ mischaracterize a significant portion of the record as to the investigator's statement, her finding that "[w]hen this statement is considered together with the statements that he felt that the scheme was shaky, it is very clear that Respondent had serious reservations about Lichtman and his scheme," (Decision, p. 5), ***simply does not have evidential support in the record considered as a whole. (Respondent's Exceptions at pp. 10-11)

3. Jimmy Dykes encouraged his wife's participation in Lichtman's scheme.

In this regard, respondent avers that the ALJ's finding here, *i.e.,* that "[n]otwithstanding his doubts about Lichtman and his scheme[,] Respondent still encouraged his wife's participation by handing the phone over to her[,]" is a statement which, itself, belies the absurdity of the conclusion, urging "that it is beyond any reasoned consideration of fairness in fact-finding to infer from giving the telephone to one's spouse in response to a caller asking for her amounts to culpable encouragement in a criminal enterprise." (Respondent's Exceptions at p. 11)

4. Jimmy Dykes' cooperation with state investigators belies his assertion that he was uninvolved and unaware of the fraud.

Respondent contends that the ALJ's finding here, that "[r]espondent's active participation in the interview with state investigators undercuts his assertion that he was uninvolved and unaware of the fraud[,]" (initial decision at p. 5) is wholly illogical. He states that hearing transcripts confirm that both he and his wife uncontrovertedly testified "that when investigators came to their house asking to speak to Mrs. Dykes, she went downstairs to the family room and asked Jimmy to join her. (Transcript of 7/22/98, 71/20-21; 7/23/98, 29/14-18)" (Respondent's Exceptions at p. 12) Moreover, he posits, it is just common sense that if state investigators come to someone's home to speak to one's wife, a husband will participate and provide whatever support he can for his wife. (*Id.*) Respondent maintains that the fact that he cooperated with and provided whatever information he could about Lichtman to investigators who came to his home to question his wife is in no way inconsistent with the fact that he was not "involved" with Lichtman or that he did not know of Lichtman's scheme at the time he spoke to Kearson, when he spoke to Lichtman on the phone, or at the time his wife spoke to Lichtman. (Respondent's Exceptions at pp. 12-13)

5. Jimmy Dykes must have had private communications which evidenced his knowledge of Litctman's scheme.

Respondent asserts that the ALJ's conclusion that "it 'strains credulity'" that Mr. Dykes never saw the explanation of benefits forms, nor discussed them with anyone including his wife, constitutes an extraordinary abuse of her discretion." (Respondent's Exceptions at p. 13) He advances that, notwithstanding the testimony of both he and his wife to the contrary, Kearson's Certification, and the documentary evidence in the record which substantiate respondent's innocence with respect to being a part of Lichtman's scheme, along

with the total failure of the District to advance any evidence that he knew of or participated in such scheme, "[t]he ALJ *** simply [chose] to disregard the evidence of record without explanation." (*Id.*)

The ALJ further evidenced abuse of her discretion, respondent argues, when she concluded that "it is inconceivable to think that, at a minimum, no questions arose at the request for insurance information to participate in a study or workshop." (*Id.*) He advances that the evidence and the record clearly establish that immediately upon hearing the name of his healthcare provider, "Lichtman told him he was not eligible to participate." As such, it is quite understandable that respondent "did not then press for details regarding the study" (*id.*), and it is ludicrous to conclude that his failure to do so demonstrates his complicity in an insurance fraud scheme.

6. Jimmy Dykes' testimony lacks credibility.

Respondent alleges that the ALJ's logic and the conclusion she draws therefrom were entirely misplaced when she concluded that his testimony lacked credibility because "[v]iewed in juxtaposition with Kearson's description of a couple of 'phone sessions with a psychiatrist', Respondent's admitted reservations about the scheme, his awareness of the check and the false claims, it is clear that Respondent was aware of the improprieties being perpetrated and chose to ignore the situation." (*Id.*) He advances

> First, for the reasons stated ***above, the ALJ's reliance on the "sworn statement" regarding phone sessions is misplaced. Second, as [previously] stated, while the Dykes did have concerns about the actual mechanics of what they initially and fairly believed to be Lichtman's legitimate program or study, it is uncontroverted that they were not initially aware of Lichtman's "scheme." Third, Mr. Dykes did not "ignore" the check and false claims – it is uncontroverted that Mr. Dykes instructed his wife to call Lichtman and the insurance company to rectify the situation. Put simply, the ALJ "juxtaposed" several faulty assumptions, rendering her conclusion that Mr. Dykes['] testimony lacked credibility groundless. (Respondent's Exceptions at pp. 14-15)

Next, respondent urges that the ALJ neglected to recognize and apply the appropriate legal standard. In this respect, he argues that the District's charge was "that [he] knowingly and intentionally participated in a scheme*** to defraud the State Health Benefits Program by providing Lichtman with personal information which he knew was going to be used to submit false insurance claims. In exchange Mr. Dykes was to be paid a portion of the monies provided to Dr. Lichtman as payment for the false claims. (*See* Statement of Charges, Charge Number One)" (Respondent's Exceptions at p. 15) Respondent maintains that it is unrefuted that it was his wife who gave Lichtman all of the family insurance information; she alone received, signed, and deposited the check from Lichtman, ultimately in her personal savings account; respondent never received any money from Lichtman nor did any benefit inure to Lichtman as a consequence of any false claim filed on respondent's behalf; and it was not until after his wife's receipt of the check and subsequent receipt of her related insurance statement that respondent was even remotely aware of the general nature of Lichtman's scheme. As such, he advances that it is unmistakable that the District did not establish that respondent participated in a scheme to commit insurance fraud as was charged. (*Id.* at p. 16) He avers that in the absence of any demonstration of "malfeasance" on the part of respondent, the ALJ and the District are now improperly attempting to broaden the District's charges to effectively proffer a heretofore unarticulated "nonfeasance" charge against respondent, *i.e.*, "failure to cure *his wife's* fraud" (emphasis in text) (*id.* at p. 16), a tactic which respondent argues is legally impermissible, an afront to due process and also unsupported by the record. (*Id.* at p. 19) He proffers that a position that he failed to act in this regard is indefensible in that there was uncontroverted testimony that upon becoming aware that claims had been submitted to his wife's insurance carrier in his name, notwithstanding that no payment had been made to anyone as a result of such claims, "***[he] told his wife to call Lichtman and Prudential to rectify the situation.

(Transcripts of 7/23/98, 48/7-11; 67/10-13; 68/9-21)" (*Id.*) Respondent maintains that the District and the ALJ fail to specify what additional action he should have taken in this regard and what legal authority compels that he was mandated to take further action, such as reporting his wife to authorities. (*Id.* at pp. 19-20)

Finally, even though the District has failed to sustain its tenure charge against him, respondent urges that if the Commissioner allows the District's "unspecified nonfeasance charge" (*id.* at p. 22) against him and finds him guilty of such unspecified charge, he consider respondent's 13-year unblemished teaching record in the District and impose some lesser penalty than termination.

The District's reply exceptions posit that the ALJ's decision is correct in all respects and urge that it be adopted by the Commissioner. It presents a general recitation of the *modus operandi* of the scheme conducted by Lichtman and cites the following excerpts from Exhibit P-1, certification of Carl H. Lichtman, dated October 29, 1996, which it asserts confirms it was apparent to Lichtman that respondent "understood how the scheme worked***,"

> ***using the information supplied by Jimmy Dykes, Dr. Lichtman would submit false claim forms to the insurance carrier indicating that Jimmy Dykes or a covered dependent had been treated by Dr. Lichtman on certain dates, when, in fact, Jimmy Dykes had not been treated by Dr. Lichtman as reflected on the claim forms submitted; and
>
> after Dr. Lichtman received the payment on the false claims, he provided 25% of the amount he received.
>
> Dr. Lichtman submitted false claims for the psychological treatment of Jimmy Dykes but received no payment on the claims from the carrier.
> (District's Reply Exceptions at p. 3)

The District presents other selected citations from hearing testimony and its interpretations of such testimony which it avows establish that "***in spite of the fact that Jimmy Dykes was, at all times, fully aware that Dr. Lichtman's scheme was suspicious, he

knowingly gave information to Dr. Lichtman about his wife which was ultimately used to defraud the State Health Benefits Program, and knowingly told his wife to call Dr. Lichtman." (*Id.* at p. 7)

The District further proffers that respondent's attempt to claim that he believed Lichtman's scheme was a "study" or a "workshop" is fully belied by the credible evidence in this matter. It argues

> First, Dr. Lichtman expressly disavowed ever telling the teachers who participated in his scheme that they were participating in a study. T22-8.24. Secondly, in their Voluntary Sworn Statement, at no time did either Jimmy Dykes or his wife mention a "study" or "workshop" as part of what they thought was involved in the scheme. Finally, Jimmy Dykes himself finally admitted that he was never told he would be participating in a workshop or study:
>
> **A. I believe I said study or workshop. I wasn't really characterizing it as a study for, you know, for sure 'cause I didn't know what it was. So I used the word study, workshop, I really didn't know what it was.** T23-49.4
>
> (District's Reply Exceptions at pp. 7-8)

It, therefore, maintains that the record substantiates that at no time did respondent actually contemplate that he would be participating in a workshop or a study. (*Id.* at p. 8)

With regard to the ALJ's determination that respondent's testimony was not credible, the District argues that such a conclusion is fully supported by the record. It cites *Sean Clark v. Trenton Housing Authority,* OAL Dkt. No. CSV 8248-97, Decision May 18, 1998, for the proposition that

> "When the testimony of witnesses is in disagreement, it is the obligation and responsibility of the trier of fact to weigh the credibility of the witnesses in order to make factual findings. Credibility is the value that a fact finder gives to the testimony of a witness. The word contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it 'hangs together' with other evidence." [citation omitted] "The term has been defined as testimony which must proceed from the mouth of the credible witness and must be such

> as our common experience, knowledge, and common observation can accept as probable under the circumstances. [citations omitted] A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience." *Id.* at 7.
> (District's Reply Exceptions at p. 10)

In conclusion, the District contends that the State Board's October 3, 1997 decision in *In the Matter of the Tenure Hearing of Alyce Stewart, State-operated School District of the City of Newark, Essex County*, wherein "the State Board held that participation in the Lichtman insurance fraud scheme constitutes unbecoming conduct warranting dismissal," is controlling in the instant case. (District's Reply Exceptions at p. 11) Accordingly, it avers, as "Jimmy Dykes took no action to remedy what he knew was a fraudulent transaction, hiding instead behind the spurious theory that he bore no obligation to act because the check in question was made out to his wife who[m] he referred to Dr. Lichtman" (*id. at* pp. 11-12), respondent's dismissal is mandated.

Upon a careful and independent examination and study of the record in this matter, including the parties' exception arguments and transcripts of the hearing conducted at the OAL on July 22 and 23, 1998, the Commissioner, finding respondent's exception arguments meritless, determines to affirm the conclusion of the ALJ, for the reasons articulated in the initial decision as explicated below, that the District has established its charge of unbecoming conduct on the part of the within respondent necessitating his removal from his tenured position.

The District herein charges respondent with unbecoming conduct for his knowing and intentional participation in a scheme to defraud the State Health Benefits Plan by conspiring with Dr. Carl Lichtman to submit claims for psychological services purportedly rendered. It is axiomatic that the burden lies with the charging party to establish the truth of the charge by the quantum of a preponderance of the believable and credible evidence. (*Atkinson v. Parsekian*, 37 *N.J.* 143, 149 (1962)) The Commissioner further recognizes that there need not be a residium of

competent evidence to establish each act considered by the Commissioner, as long as the combined probative force of the relevant hearsay and the relevant competent evidence sustains the ultimate finding of unbecoming conduct. (See *In the Matter of the Tenure Hearing of Cowan*, 224 *N.J. Super.* 737, 751 (App. Div. 1988), citing *Weston v. State*, 60 *N.J.* 36 (1972).) In determining whether the District has met its burden, in addition to giving full consideration to all evidentiary proofs which comprise the record, the Commissioner appreciates that, in this particular matter, a large consideration is the plausibility of the ALJ's factual findings and her weighing of the evidence and the credibility of the witnesses. In this regard, the Commissioner is satisfied, based on the record as a whole, that the ALJ considered all testimony and evidence and weighed it according to the credibility of the witnesses and the plausibility of its content and he finds no basis whatsoever in the record before him for overturning the credibility assessments of the ALJ who had the benefit of observing the witnesses firsthand. In so concluding the Commissioner was especially mindful that

> ***Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can appprove as probable in the circumstances.*** (*In re Perrone*, 5 *N.J.* 514, 522 (1950))

In considering respondent's exceptions to the ALJ's decision herein, it is noted that central to his objections is respondent's contention, that in reaching her findings and conclusions, the ALJ failed to ascribe proper credence to his proffered assertions that he was an "innocent victim" in this matter, at all times believing that participation in Lichtman's "enterprise" involved participation in a legitimate "program" or "study," a claim which is blatantly belied by the record. Specifically, the Commissioner observes that respondent reports that he was introduced to Lichtman's enterprise by his "personal friend of 30 years"

Rossie Kearson. (See T-7/23/98, p. 46, 17-23.) In his Voluntary Sworn Statement to state investigators (Exhibit P-2)[1] respondent declared

> I was approached by Rossie Kearson, who is also a teacher in the Newark School System in the Spring 1994, possibly in April early May. Kearson telephoned me at home and said that he knew of a psychiatrist that you can have a couple of sessions with over the phone and after speaking with the Doctor several times you would receive a check. Kearson said that he has received a check from the doctor and he knows of other who have also. Kearson gave the name of Carl Lichtman and gave me a telephone number. (Exhibit P-2, page 2)

Of particular import in this recitation is the fact that respondent declares that his personal friend, Kearson, had, at the time he spoke to respondent, *received a check* from Lichtman. The Commissioner concludes that it strains credulity to believe that upon learning that Kearson had received compensation from Lichtman as a result of his participation in Lichtman's "enterprise," respondent did not press his friend for details as to what specifically was required in order for his friend to have "earned" this compensation.

The Commissioner, consequently, finds respondent's attempts to portray himself as an "innocent victim" in this matter and, likewise, his contention that the ALJ and the District are attempting to pursue a "nonfeasance" charge against him for failure to cure his wife's fraud utterly devoid of any logical or reasonable inference from the record before him. Rather, the Commissioner concludes that, on the whole, the credible evidence in the matter *sub judice* establishes that

- Respondent made a conscious decision to involve himself in what he knew or should have known was, at the very minimum, a seriously questionable enterprise;

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[1]The Commissioner finds that any objections on the part of respondent to this statement or attempts on his part to discredit or impugn its evidentiary value in this matter are unfounded. Full examination of the statement, transcripts, and respondent's proffered arguments leads the Commissioner to agree with the ALJ's determination at hearing that it is clear that any inaccuracies which might exist in this exhibit are technical rather than substantive in nature. (See T-7/22/98, p. 109, 8-14.)

- Respondent actively pursued contact with Lichtman and introduced this man and his "scheme" into his home;
- Upon learning that, due to his particular health care provider, he would be ineligible to receive compensation, he perpetuated his family's "participation" in this questionable enterprise by turning Lichtman over to his wife who he had reason to believe had insurance which would make her eligible to participate;
- Upon his wife's receipt of a check from Lichtman and insurance statements, which undeniably confirmed the impropriety of the enterprise, respondent failed to take any action to cure the consequences of his involvement in the scheme. The Commissioner finds it without question that reasonable individuals would agree that respondent's responsibility to right a wrong which he had initiated extended much further than merely telling his wife to call Lichtman and the insurance carrier. Even so, respondent made a conscious decision to take no action to remedy what he knew was a wrongful situation that he had initiated for both himself and his wife.

As such, the Commissioner finds that the District has established its charge of unbecoming conduct against respondent as the quality of the evidence here leads a reasonably cautious mind to the conclusion that respondent engaged in knowing and intentional participation in conduct with a purpose to defraud.[2]

As to the appropriate penalty, The Commissioner is compelled to reiterate his long-standing belief that educators, by virtue of the unique position they occupy must be held to an enhanced standard of behavior and must continually realize that they serve as role models

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[2]Notwithstanding the Commissioner's ultimate determination herein, he is compelled to note that the District's reliance on *In the Matter of the Tenure Hearing of Alyce Stewart, State-operated School District of the City of Newark, Essex County,* as dispositive in this matter is misplaced. This cited case was decided on a summary basis, in that respondent failed to answer the charges lodged against her, and is of no precedential value in the case at issue herein.

to students and the community. When it is established that these individuals have failed to fulfill their obligations and have violated the public trust, it is imperative, to assure public confidence in the state's educational system, that they be subject to appropriate penalty for their behavior. Although duly considering respondent's apparently unblemished 13-year record with the District, the Commissioner, nonetheless, determines that the charge established herein, under the particular circumstances of this matter, and when committed by a teaching staff member charged with molding and shaping young minds both academically and by virtue of example, is "sufficiently flagrant" to warrant respondent's dismissal. (See *Redcay v. State Board of Education*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943); aff'd 131 *N.J.L.* 326 (*E. & A.* 1944).)

Accordingly, for the reasons expressed therein as expounded upon above, the Commissioner affirms the initial decision of the OAL and hereby orders that Jimmy Dykes be dismissed from his tenured teaching position with the State-operated School District of the City of Newark as of the date of this decision. This matter shall be transmitted to the State Board of Examiners, pursuant to *N.J.A.C.* 6:11-3.6, for action, as that body deems appropriate, against respondent's certificate.[3]

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

FEBRUARY 11, 1999

[3] 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.