

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

SYNOPSIS

District certified tenure charges of unbecoming conduct and corporal punishment against respondent librarian with 35 years of service.

In light of the inconsistencies of the testimony of the student witnesses and the untimely manner in which the incident was investigated by the administrators, the ALJ determined that the District did not prove Charge One relating to corporal punishment being committed against student Z.L. and that Charge Two relating to unbecoming conduct was proven only to the extent that respondent left Z.L. unsupervised for approximately five minutes. ALJ dismissed Charge One and sustained Charge Two only as the charge pertains to Z.L. ALJ ordered respondent reinstated to her former position with penalty of forfeiture of one month's pay (\$6,000).

Commissioner concurred with the findings and determination of the ALJ in the initial decision. Commissioner also determined that the penalty of one month's loss of salary was appropriate in that Z.L. was left in an area of the library substantially unsupervised for approximately five minutes and could have been injured or could have damaged school property.

FEBRUARY 11, 1999

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The record of this matter and initial decision of the Office of Administrative Law have been reviewed. Exceptions to the initial decision filed by the State-operated School District of the City of Newark (petitioner), as well as respondent's reply thereto, were timely filed pursuant to *N.J.A.C.* 1:1-18.4. The arguments raised by the parties in these submissions were duly considered by the Commissioner in rendering the decision herein.

Petitioner's exceptions object to the Administrative Law Judge's (ALJ) conclusion that it did not prove Charge One, Corporal Punishment, and Charge Two, Conduct Unbecoming a Teacher as it regards L.G. Petitioner avers, *inter alia*, that the ALJ failed to credit the testimony and evidence presented in support of Charge One involving the pupil Z.L., as well as the testimony of administrator Carol Schwartz and other witnesses with respect to Charge Two, wherein respondent failed to report that pupil L.G. exited her class and was outside of the building. Petitioner urges the Commissioner to sustain the charges and order respondent's dismissal. If, however, the Commissioner determines to affirm the ALJ's ruling, petitioner requests that the Commissioner levy a more severe penalty for Z.L.'s lack of supervision, emphasizing that on October 8, 1996, Vice Principal Schwartz verbally warned respondent about L.G. being outside the class without supervision. This warning was followed up in writing the next day (P-1), making this incident the second time in a month that one of respondent's pupils was left unsupervised. With respect to Charge Two, petitioner urges that it is inexplicable that Ms. Schwartz, an experienced vice principal who was not respondent's supervisor, would fabricate a story that she found L.G. outside the building and that respondent, rather than seeking

to find the student, was reading to the class when Ms. Schwartz brought L.G. back to class. Petitioner further maintains that even if L.G. exited the corridor door and even if respondent did not have a key to the library or no access to the phone, her version of events breaks down because she remained in the library without notifying the office of the problem when the main office is across the hall from the library and the other vice principal's office is next to the library.

Respondent's reply exceptions essentially recast and reiterate the arguments advanced before the ALJ in her post-hearing brief, setting forth at length passages from the transcripts of the four days of hearing which she believes demonstrate the lack of credible testimony and evidence in support of the charges. Respondent also sets forth her exceptions to the penalty levied by the ALJ, urging, *inter alia*, that she had an unblemished educational career of 35 years and that Z.L. was only technically left unattended in that she was never more than 15 feet from respondent who could look in and see her. Respondent further avows that a penalty of \$6,000 one (1) month's pay, is severe in light of her good intentions and unblemished career.

Upon a thorough and comprehensive review of the entire record of this matter, including the transcripts and post-hearing submissions of the parties, the Commissioner concurs with the findings and conclusions of the ALJ that Charge One relating to corporal punishment being committed against student Z.L. was not proven by petitioner and that Charge Two was proven only to the extent that respondent left Z.L. unsupervised for approximately five minutes. A reading of the transcripts readily underscores the substantive, material inconsistencies among the testimony of the student witnesses, inconsistencies which, as the ALJ found, raise substantial questions regarding the veracity and accuracy of their renditions of what occurred in the library on October 23, 1996. The Commissioner is also in full agreement with the ALJ's conclusion that the manner in which the incident was investigated by administrators raises questions regarding the credibility of various witnesses. It is, indeed, troubling that Principal Perez did not immediately speak to other students in the class after speaking to Z.L. on October 23, rather than doing so at the behest of petitioner's counsel just a few days before the hearing commenced in this matter, nearly 16 months after the incident was supposed to have occurred.¹ Also of concern is the manner in which Principal Perez called a group of 11 students who still attended Mt. Vernon School to the auditorium one week before this hearing started and asked "***does anybody remember any teacher last year, when you were with Mrs. Key's homeroom, in your

¹ It is noted that in the case of student R.D.A., the student was never even questioned by any administrator about his possible knowledge regarding the October 23, 1996 incident until the morning of the day he testified. (T3:51-52)

fifth grade, does anybody remember any teacher putting a hand on a student, grabbing a student, slapping a student, any-- at any time.***?” (Tr. 3:151) As stated by the ALJ

***The manner in which [Perez] presented the subject for discussion some one year later, when he called students to the auditorium, also raises questions regarding the recollection of those students who spoke to him, as does the fact that apparently only three students recollected any such incident. The fact that Perez did not speak with students who did not respond affirmatively to his queries is also troubling. His explanation of why he did not immediately speak to other students was not, on its face, reasonable. The manner in which Jakubiak was subsequently removed from Mount Vernon, and the manner in which she was served tenure charges, also raise questions regarding the conduct of administrators. (Initial Decision at pp. 39-40)

Despite petitioner’s arguments to the contrary regarding the ALJ’s disposition of the charge of unbecoming conduct as it relates to kindergarten student, L.G., the Commissioner, upon a thorough review of the record, including a full consideration of Ms. Schwartz’s testimony, finds insufficient basis to disturb either the credibility determinations of the ALJ, who had the benefit of assessing the testimony firsthand, or her findings and conclusion relative to the L.G incident.

The Commissioner also determines that the penalty of one month’s loss of salary (approximately \$6,000), which was assessed by the ALJ, is appropriate in light of the finding and conclusion that respondent left Z.L. in an area of the library substantially unsupervised for approximately five minutes. In such circumstances, a student could be injured or an opportunity created for school property to be damaged or destroyed.

Accordingly, the initial decision of the ALJ, including corrections thereto submitted by the OAL,² is adopted for the reasons expressed therein.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

FEBRUARY 11, 1999

² See attached letter from the OAL delineating corrections to the initial decision.

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.