

LYDIA ANDERSON, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, ESSEX :
COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner, a nontenured, fourth-grade teacher, appealed the District's suspension and ultimate termination of her for unprofessional and inappropriate conduct in her capacity as a teacher.

After hearing testimony, the ALJ found that petitioner engaged in a tug-of-war with a student who attempted to sit after being directed by petitioner to stand in class, resulting in the student falling down, and permitted an uncle of a female student to administer a beating to the student in her presence, failing to inform the school principal or the State Division of Youth and Family Services of the beating incident. The ALJ rejected petitioner's contention that the District improperly denied her due process by failing to provide her with an investigation or hearing prior to her dismissal, noting that, pursuant to established law, the decision to terminate petitioner was reasonable within the District's discretion and, as a nontenured teacher, petitioner was only entitled to a statement of the reasons for her dismissal. Here, the District investigated the incidents, concluded that they had occurred and provided petitioner with a statement of the reasons for her dismissal, the receipt of which petitioner did not dispute. Thus, the ALJ dismissed the petition and recommended referral of this matter to the State Board of Examiners, pursuant to *N.J.A.C. 6:11-3.6*, based on her finding that petitioner testified untruthfully at the hearing.

The Commissioner agreed with and adopted as his own the recommended decision of the ALJ for the reasons well expressed therein and ordered a copy of this decision to be forwarded to the State Board of Examiners.

January 19, 2000

OAL DKT. NO. EDU 1509-96
AGENCY DKT. NO. 490-12/95

LYDIA ANDERSON, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT : DECISION
 OF THE CITY OF NEWARK, ESSEX :
 COUNTY, :
 :
 RESPONDENT. :
 :
 _____ :

The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. On November 3, 1999, petitioner submitted a Substitution of Attorney notice indicating that Dan S. Smith, Esq. was now her attorney of record in the matter and requesting that a 30-day extension be granted to permit his review of the record and to submit exceptions to the Initial Decision. Consequently, an extension of the 45-day statutory period for the Commissioner's review and issuance of a final decision from November 15, 1999 until December 30, 1999 was requested by the Commissioner and granted by the OAL on November 8, 1999. On November 24, 1999, petitioner's attorney requested an additional three-week extension because he had not yet been able to secure the complete record from petitioner's former attorney. A second extension until January 21, 2000 was then granted by the OAL for issuance of the Commissioner's final decision in this matter.

Petitioner's exceptions were timely filed on December 20, 1999. The Board's reply exceptions were, upon the grant of an extension, timely filed on January 3, 2000.

In her exceptions, petitioner avers, *inter alia*, that the Administrative Law Judge (ALJ) erred in Finding of Fact 10 (Initial Decision at 17) that “Anderson was not charged with physically abusing students in violation of District policy; thus, there was no basis for the District to register a complaint about Anderson with the DYFS.” She argues that she *was* suspended and eventually terminated for neglect involving the failure to stop an alleged beating and report such; therefore, she was entitled to due process in accord with the respondent’s own policy. Petitioner further maintains that it is totally inconsistent that respondent should not have the advantage of termination based on the neglect of a DYFS regulation on the one hand and the refusal to follow its own DYFS policy on the other hand. Petitioner’s exceptions set forth a lengthy discussion of *Nicoletta v. No. Jersey District Water Supply Commission*, 77 N.J. 145 (1978) in support of her contention that respondent failed to accord her due process rights, arguing that the ALJ’s reliance on *Kufel, supra*, was in error because, she, unlike the petitioner in *Kufel*, was guaranteed due process when a suspension arose with respect to a DYFS matter based upon respondent’s own policy.

Respondent rebuts petitioner’s arguments with respect to due process, emphasizing that its child abuse and neglect policy is not at issue herein because the sole basis for petitioner’s termination was *not* because she was accused of child abuse but because she engaged in inappropriate and unprofessional conduct, *i.e.*, by being aware that a beating incident took place and failing to report the incident, as required. Respondent further argues that, even by petitioner’s own acknowledgement, even if the policy were applicable, all that the policy requires is notice of the charges and an opportunity to respond to them prior to disciplinary action. Of this, respondent states, “[i]t is undisputed that Anderson was given notice of the charge and an opportunity to respond; she spoke to administrators concerning the October 26th

incident and submitted handwritten and typewritten statements concerning the November 15th incident.” (Respondent’s Reply Exceptions at 8) Moreover, respondent urges that the ALJ correctly determined that there is no legal basis requiring that petitioner receive a pre-termination hearing, contending, *inter alia*, that *Nicoletta, supra*, is not applicable to the within matter. Further, as in *Kufel*, petitioner cannot rely upon constitutional constraints or legislation which restrict the otherwise “almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the local board.” 96 *N.J.A.R.2d* (EDU) at 447, quoting *Dore v. Bedminster Twp. Bd. of Ed.*, 185 *N.J. Super.* 447, 456 (App. Div. 1982).

Petitioner also avers that the ALJ erred in finding that: (1) she failed to notify either the school principal or the State of New Jersey’s Division of Youth and Family Services of the beating incident; and (2) the principal questioned each student in the classroom and adults.

Upon comprehensive review of the record, including the transcripts of the hearing and the parties’ exceptions, the Commissioner agrees with and adopts as his own the recommended decision of the ALJ dismissing the petition for the reasons well expressed in the Initial Decision. The Commissioner, after thorough consideration of the entire record, finds the ALJ’s analysis and discussion of the law and legal principles applicable to the factual circumstances and issues in the instant matter to be cogent and her conclusions fully supported by the record.

Having determined that petitioner has failed to establish that respondent’s action terminating her was in violation of her constitutional or statutory rights, the Commissioner hereby dismisses the Petition of Appeal. *Dore, supra; Kufel, supra; Randy Pratt v. Board of Education of the Borough of Butler, Morris County*, State Board, decided January 6, 1999.

Further, a copy of this decision shall be forwarded to the State Board of Examiners, pursuant to *N.J.A.C.* 6:11-3.6, for review and action, if any, as it deems appropriate.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 19, 2000

* 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.