#403-08 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu02152-07_1.html)

IN THE MATTER OF THE TENURE	:	
HEARING OF WARREN JONES,	:	COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY	:	DECISION
OF TRENTON, MERCER COUNTY.	:	
	:	

SYNOPSIS

Board certified charges of inefficiency against tenured elementary school teacher, alleging that – despite assistance and a reasonable opportunity for correction and improvement – respondent failed to provide efficient instruction, document instruction and evaluation of student performance, and comply with established parameters for schedules, content, methods and pacing, consistent with the New Jersey Professional Standards for Teachers, Core Curriculum Content Standards, and Board academic achievement policies. The Board sought respondent's dismissal from tenured employment.

The ALJ found respondent to be inefficient as charged and recommended that he be dismissed, noting that the Board had complied with the procedural requirements for charges of inefficiency pursuant to *N.J.S.A.* 18A:6-11.

The Commissioner adopted the ALJ's decision and ordered respondent dismissed from his tenured employment.

September 29, 2008

OAL DKT. NO. EDU 2152-07
AGENCY DKT. NO. 62-3/07

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HEARING OF WARREN JONES,	:	COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY	:	DECISION
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	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4, to which the Board of Education (Board) did not reply.

In his exceptions, respondent contends that the ALJ erred in allowing the Board to present a substantial amount of evidence that did not pertain to the charges ultimately prosecuted against him, thus losing the proper focus for a proceeding of this type; according to respondent, the Board – contrary to the well-established dictates of *Donald Rowley v. Board of Education of the Manalapan-Englishtown Regional School District*, 205 *N.J. Super.* 65 (App. Div. 1985) – submitted "reams of documentation" suggesting a general history of inefficiency and absenteeism, but "very little" pertaining to his performance, during the inefficiency correction period, as to the specific charges certified. (Respondent's Exceptions at 3-4, quotations at 3) Respondent also asserts, again citing *Rowley*, that the Board failed to provide the "positive assistance" necessary for him to overcome his alleged inefficiencies, since – notwithstanding that "there is ample evidence in the record suggesting that Rashawn Adams, the principal during the inefficiency period, held regular meetings and review sessions" with respondent – the Board made no effort, even though better work space was available, to alter the "deplorable" conditions

under which respondent was forced to work, thereby dooming him to failure and violating the law as a result. (*Id*. at 4-5)

Upon review, the Commissioner is unpersuaded by respondent's arguments and fully concurs with the ALJ that dismissal from tenured employment is warranted.

Like the ALJ, the Commissioner finds the testimony and evidence in this matter to demonstrate unequivocally that 1) respondent's inefficiencies were numerous, longstanding, evident under varying circumstances, consistently identified by multiple evaluators, and largely conceded by respondent himself, notwithstanding that he constantly sought to explain them away or attribute them to the unfairness or hostility of his superiors; and 2) respondent was given extensive assistance, objective assessments, and every reasonable opportunity to improve his teaching performance, both in the course of the eight-year period preceding the initial filing of tenure charges and during the mandatory 90-day period provided by the Board prior to certification of final charges – the proofs concerning which, contrary to respondent's assertion on exception, more than adequately attest to his failure to correct the very serious deficiencies his corrective action plan was developed to address.[1] The Commissioner also finds, like the ALJ, that respondent's desire to better the lives of disadvantaged children and his efforts to increase their confidence and self-esteem – however commendable – cannot overcome his demonstrably deficient teaching skills, and that respondent's inability to provide effective instruction will actually work to *compound* the difficulties faced by such students.

[1] In so holding, the Commissioner categorically rejects respondent's contention – first raised on exception, since it appears in neither his post-hearing submission nor the ALJ's summation of the record, to which respondent made no objection or correction when given the opportunity (Initial Decision at 3-4) – that the Board was required to provide him with a different teaching environment during his 90-day improvement period. Even granting – solely for purposes of argument – that respondent might have performed better under less difficult conditions, it is clear that his evaluators, and the ALJ on review, took account of what all recognized as a less than ideal situation, and nothing in *Rowley*, *supra* – or, indeed, in any prior inefficiency matter where the Board was found not to have complied with the 90-day improvement requirement – even remotely suggests that a board's obligation for assistance extends to placing a teacher facing inefficiency charges in an environment other than the one in which he or she is ordinarily assigned to teach.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from tenured employment as of the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners pursuant to *N.J.A.C.* 6A:9-17.5.

IT IS SO ORDERED.[2]

COMMISSIONER OF EDUCATION

Date of Decision: September 29, 2008
Date of Mailing: September 30, 2008

[2] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36.