

#244-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF ALICIA DUGAN, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION
JERSEY CITY, HUDSON COUNTY. :

SYNOPSIS

The petitioning Board certified charges of chronic and excessive absenteeism, unbecoming conduct, incapacity and other just cause, against respondent – a tenured elementary school teacher employed by the district – for excessive absences over the period from the 2005-2006 school year through the 2010-2011 school year. The Board sought removal of respondent from her tenured position. The respondent contended that she was not excessively absent and that her major absences were the result of a family member’s chronic health problem.

The ALJ found, *inter alia*, that: it was uncontroverted that respondent was absent for 197 days over a six year period, which likely impacted the education of her students; respondent’s salary increment was withheld for three consecutive years due to her absenteeism; respondent failed to demonstrate that either she or her child had a chronic health condition that cause her frequent absences; the Board had provided respondent with ample warning of its dissatisfaction with her attendance through written evaluations and the withholding of three consecutive annual salary increments; respondent’s defenses to the charges are without proofs; and respondent failed to demonstrate any initiative or attempt to improve her attendance even after three years of salary increment withholding. The ALJ concluded that the Board sustained its burden of proving that respondent’s excessive absenteeism constituted incapacity, unbecoming conduct and just cause warranting removal of respondent from her tenured position.

Upon independent review of the record, the Commissioner rejected the ALJ’s finding that respondent’s excessive absenteeism constituted incapacity, but otherwise concurred with the ALJ and adopted the Initial Decision as the final decision in this matter. Respondent was dismissed from her tenured employment, and a copy of this decision was forwarded to the State Board of Examiners for action as that body deems appropriate.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

June 14, 2012

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JERSEY CITY, HUDSON COUNTY. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Counsel for the parties did not file exceptions to the Initial Decision.¹

Upon full review and consideration, the Commissioner concurs with the Administrative Law Judge (ALJ) that the District has established that respondent’s excessive absenteeism constituted unbecoming conduct and just cause warranting respondent’s dismissal from her tenured position.² In so determining, the Commissioner was cognizant that in order for a District to terminate a tenured employee for excessive absenteeism, it must demonstrate that:

¹It is noted that by communication – dated May 30, 2012, received on June 1, 2012 – respondent, Alicia Dugan, attempted to submit *pro se* exceptions in this matter. By letter dated June 4, 2012, Ms. Dugan was advised that the Commissioner and his staff are, by law, strictly proscribed from considering information or argument outside the formal record of contested case proceedings – **including papers sent directly by a party who is represented by legal counsel**. Therefore, respondent’s submission was returned to her without consideration.

²The Commissioner, however, rejects the ALJ’s finding that respondent’s excessive absenteeism in this matter constitutes incapacity. “There has been no suggestion by either party that respondent is physically or mentally disabled from the performance of her regular and assigned duties such as to warrant the filing of an application for ordinary disability retirement benefits pursuant to *N.J.S.A. 18A:66-41*,” *In the Matter of the Tenure Hearing of Patricia Finn, School District of Bordentown Regional School District, Burlington County*, at 4, decided by the Commissioner March 10, 2000, decision #86-00, a touchstone of an incapacity charge. (*Contrast: State-operated School District of the City of Jersey City v. Vincent Pellechio*, 92 *N.J.A.R. 2d* (EDU) 267, where respondent suffered from long-term chronic severe asthma which accounted for most of his absences; *In the Matter of the Tenure Hearing of Jerome Kacprowicz, State-operated School District of the City of Jersey City, Hudson County*, 93 *N.J.A.R. 2d* (EDU)147, where respondent’s absences were attributable to illness and medical problems as a result of injuries arising from two auto accidents; and *In the Matter of the Tenure Hearing of Catherine Reilly, School*

There was consideration of (1) the particular circumstances of the absences and not merely the number of absences, (2) the impact that the absences had on the continuity of instruction during the period of time the absences occurred, not merely after the fact and (3) that there be some warning given to the employee that his or her supervisors were dissatisfied with the pattern of absences. (*In the Matter of the Tenure Hearing of Lena White*, 92 N.J.A.R. 2d (EDU) 157, 161, citing *Kelsey v. Board of Education of the City of Trenton*, decided by the Commissioner May 11, 1989, decision #127-89)

The record in this matter clearly evidences that the District has sustained its burden in this regard.

Accordingly, the recommended decision of the OAL, as modified above, is adopted as the final decision in this matter. Respondent Alicia Dugan is hereby terminated from her tenured teaching position with the School District of the City of Jersey City as of the date of this decision. A copy of this decision is being forwarded to the State Board of Examiners for action as that body may deem appropriate.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2012

Date of Mailing: June 15, 2012

District of the City of Jersey City, Hudson County, 1977 S.L.D. 403, where the majority of absences were in connection with a physical ailment plaguing the teacher.)

³This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36. (N.J.S.A. 18A:6-9.1)*