

EDU #11879-95
C # 547-96
SB # 2-97

MARY ELLEN DI PILLO, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE TOWN- : DECISION
SHIP OF RANDOLPH, MORRIS COUNTY, :
RESPONDENT-CROSS/APPELLANT. :
_____ :

Decided by the Commissioner of Education, December 12, 1996

For the Petitioner-Appellant, Bucceri & Pincus (Sheldon H. Pincus , Esq. and
Mary J. Hammer, Esq., of Counsel)

For the Respondent-Cross/Appellant, Vogel, Chait, Schwartz & Collins
(Aron M. Schwartz, Esq., of Counsel)

In August 1990, the Board of Education of the Township of Randolph (hereinafter "Board") certified tenure charges of unbecoming conduct against Mary Ellen DiPillo (hereinafter "petitioner"). Following a hearing, the Commissioner of Education adopted the finding of the Administrative Law Judge ("ALJ") that petitioner had exposed a fourth-grade student to humiliation by directing him to get down on his knees in front of his schoolmates to ask for the return of a textbook he had left in another classroom. The Commissioner determined the appropriate penalty for such conduct to be the loss of 120 days' salary and forfeiture of petitioner's salary increments for the 1990-91 school year.

On appeal, we found that the Board had also demonstrated a charge of corporal punishment against petitioner. That charge involved an incident in which petitioner had caused a nine-year-old student to hit the back of his head against a wall when she forcibly lifted his chin in order to get him to look at her. Stressing the gravity of the offense, we modified the penalty imposed by the Commissioner, directing that petitioner forfeit six months' salary, as well as her salary increments for the 1990-91 school year.

In July 1995, petitioner filed the instant petition with the Commissioner, alleging that the Board had improperly withheld her salary increments and other benefits for the 1991-92 and 1992-93 school years, during the pendency of those tenure charges.

On October 25, 1996, an ALJ recommended granting petitioner's motion for summary decision and directing the Board to restore petitioner's increments for 1991-92 and 1992-93, along with post-judgment interest. The ALJ also recommended crediting petitioner with sick and personal leave days for those years.

On December 12, 1996, the Commissioner accepted in part and rejected in part the ALJ's decision. Citing In the Matter of the Tenure Hearing of Jerry Barshatky, decided by the State Board of Education, May 1, 1996, the Commissioner stressed that petitioner had no entitlement to an award of increments during her suspension following the certification of the tenure charges. The Commissioner noted that since petitioner had not prevailed on the merits of those charges, she had no entitlement to be made whole through retroactive restoration of salary increments. The Commissioner agreed with the ALJ, however, that petitioner was entitled to sick leave and personal leave time for 1991-92 and 1992-93.

Petitioner filed the instant appeal to the State Board.

After a careful review of the record, we affirm the decision of the Commissioner with the following clarification.

We reject petitioner's contention that her salary increments for the 1991-92 and 1992-93 school years are required to be restored since our decision of May 3, 1995 did not direct the withholding of those increments. As pointed out by the Commissioner, a tenured teaching staff member has no entitlement to salary increments during his or her suspension while tenure proceedings are pending. Barshatky, supra. Nor is a district board required to take formal action to withhold increments during such period. Id. In this case, the Board's failure to provide petitioner with increments in 1991-92 and 1992-93 was not before us in the tenure case, and our decision on those charges did not address that issue, determine petitioner's entitlement to increments, or direct restoration of those increments. Moreover, since petitioner did not prevail on the merits of the tenure charges, she has no entitlement to such relief as is necessary to make her whole, including back pay for the period of her initial suspension and retroactive restoration of her increments.

Accordingly, with the above clarification, we affirm the decision of the Commissioner.

August 6, 1997

Date of mailing _____