

EDU #8800-94
C # 203-95
SB # 78-95

IN THE MATTER OF THE TENURE :
HEARING OF SONDRA YANNIELLO, : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION
OF MILLVILLE, CUMBERLAND COUNTY. :

Decided by the Commissioner of Education, June 12, 1995

For the Petitioner-Respondent, Russell E. Paul, Esq.

For the Respondent-Appellant, Selikoff & Cohen (Stephen R. Cohen, Esq.,
of Counsel)

Sondra Yanniello (hereinafter "respondent") commenced her employment with the Board of Education of the City of Millville (hereinafter "Board") as a language teacher in January 1986. In December 1988, after respondent revealed to her principal that she had a drug problem, she entered into a 28-day inpatient treatment program, which she successfully completed. When respondent returned to the district in January 1989, she signed a Health Improvement Program Contract as a condition of her continued employment in which she agreed to submit to random drug testing during the 1988-89 school year and testing in subsequent years if there were ever evidence or suspicion of a renewed problem. Respondent acknowledged her understanding therein that if such testing proved to be positive, she would be subject to disciplinary action. In

1993, the Board appointed respondent to a position as a substance awareness counselor.

There was no further evidence of drug use until May 20, 1994. At that time, respondent had been sponsored by Millville Senior High School to attend a workshop in Toms River on drugs in sports when she took "two diet pills" containing amphetamine, a controlled dangerous substance, which she indicated she had obtained from a friend. Respondent's supervisor, Franklin MacDonald, testified that he had received four phone calls from respondent beginning at approximately 7:40 a.m. on the morning of Friday, May 20. As he related in a memorandum to respondent dated May 23, 1994: "Your disoriented state during the first and second phone calls prompted my concern....You appeared out of control in the morning at your hotel, your conversation rambled, seemed disjointed and, at times, you made little sense." Exhibit J-3, in evidence. Respondent told MacDonald that she had taken a drink the night before. Fearing for respondent's safety, MacDonald advised her not to drive to the workshop and told her that he would arrange for someone to pick her up. Tr. 2/8/95, at 64. Later that day, respondent called MacDonald from a drug and alcohol rehabilitation center. During the course of the day, MacDonald spoke to the acting principal and expressed concern regarding a possible relapse of respondent's drug abuse. MacDonald related in his memorandum that at their meeting held that morning, respondent had expressed "embarrassment and sorrow for your actions on Friday and your guilt for drinking Thursday evening, May 19, 1994 (Note - you denied the use of drugs)." Exhibit J-3, in evidence.

Pursuant to the terms of her Health Improvement Program Contract, respondent consented to a drug test, which revealed the presence of amphetamines. She subsequently acknowledged that she had lied about her use of illegal drugs, stating that she was afraid and embarrassed to admit to the drug use and contending that society more readily accepted social drinking. Tr. 2/8/95, at 178.

On June 21, 1994, the Board certified the instant tenure charges against respondent for unbecoming conduct as the result of that incident.

On April 20, 1995, an Administrative Law Judge (“ALJ”), finding that respondent’s addiction to drugs was afforded handicapped status under the New Jersey Law Against Discrimination, concluded that one “slip” did not provide just cause for a teacher’s termination. Nor, however, did he find that the chances for rehabilitation should be endless:

The concept of reasonable accommodation as it pertains to a teacher does not include the concept of unlimited opportunities to seek recovery. The teacher’s interest in obtaining recovery must be balanced against the school district’s interest in providing a drug free environment for students. If, for example, respondent had not voluntarily admitted her slip and sought recovery or if she had ingested drugs on school property or the effects of drugs were manifest while she was teaching in the school, termination would be the appropriate penalty upon a second slip.

Initial Decision, slip op. at 21.

The ALJ recommended that respondent forfeit the 120 days’ salary which had been withheld following certification of the tenure charges.

On June 12, 1995, the Commissioner adopted the ALJ’s finding that respondent was guilty of unbecoming conduct, but rejected the ALJ’s recommended penalty. The

Commissioner disagreed with the ALJ's finding that a "three strikes" standard should be applied to this case, and rejected the significance placed by the ALJ on the fact that students were not exposed to respondent's addictive behavior and that she had voluntarily reported her actions to the district while also seeking assistance from a treatment facility. The Commissioner noted that such rationale would permit repeated use of an illegal substance provided the employee did not allow students to be exposed to such use and that the employee voluntarily reported each "slip" and sought assistance. He also found that the Board had reasonably accommodated respondent's handicap by supporting her effort to obtain treatment for her addiction in 1989 so as to permit her to return to work in the district. Under the circumstances, the Commissioner determined that dismissal of respondent from her tenured employment was the appropriate penalty for her unbecoming conduct.

Respondent filed the instant appeal to the State Board.

After a thorough review of the record, we affirm the determination of the Commissioner to dismiss respondent from her tenured employment, as modified herein.

As acknowledged by the ALJ and Commissioner, drug addiction is a handicap within the protection of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Matter of Cahill, 245 N.J. Super. 397, 400 (App. Div. 1991). "[W]here feasible, an employer should afford an opportunity for rehabilitation to an employee handicapped by substance abuse." Id. at 401. However, "[t]he employer is not required to assume—or hope—that the employee will limit alcohol and other drug consumption to off-duty hours, or that the effects of drugs will be dissipated by the time the work day begins." Id.

In State-Operated School District of Jersey City v. Dorothy Howard, 95 N.J.A.R. 2d (EDU) 301 (App. Div. 1995), the district board filed tenure charges of chronic and excessive absenteeism against a tenured staff member following her successful completion of a residential alcohol abuse program. The Appellate Division affirmed the State Board's determination that dismissal of the staff member was not appropriate under those circumstances. The State Board observed that the record in that case demonstrated that the staff member was successfully addressing the underlying cause of her past absenteeism and was able to return to work. The State Board found nothing in the record of that case to warrant a conclusion that she would abandon her program of recovery thereafter or that she was not capable of satisfactorily fulfilling her job responsibilities. The Appellate Division stressed, however, that "nothing in the State Board's decision or in this opinion would prevent the district from refiling tenure charges in the event of a failure of Howard's rehabilitation in the future." Id. at 302.

Under the particular facts in the record before us, we agree that the Board has demonstrated respondent's unbecoming conduct and that dismissal of respondent from her tenured employment is the appropriate penalty.

As noted by the Commissioner, the Board reasonably accommodated respondent's handicap. The Board supported respondent's efforts in undergoing a 28-day inpatient drug rehabilitation program and subsequently reinstated her on the condition that she submit to drug testing if there were ever further suspicion of illegal drug use. When such a suspicion arose in May 1994, respondent tested positive for amphetamines.

We emphasize, moreover, that at the time of her positive drug test, respondent was employed in the district as a substance awareness counselor, a position in which she was responsible for counseling students on drug use and assisting students with drug related problems. The significance of respondent's responsibilities was underscored by MacDonald, who testified that "[t]he fact that she is acting in the capacity of a substance awareness coordinator forbids her from using any kind of illegal drug or alcohol, for that matter." Tr. 2/8/95, at 90.

Finally, we reject the ALJ's finding, apparently adopted by the Commissioner, that respondent voluntarily reported her "slip" to school administrators. It is undisputed that respondent expressly denied using drugs, the basis for her addiction, until after the drug test came back positive, claiming instead that she had consumed alcohol. Notwithstanding the fact that respondent may have been afraid and embarrassed to acknowledge her relapse, tr. 2/8/95, at 178, we find that she demonstrated a lack of candor in explaining her "disoriented state" to her supervisor.¹

Accordingly, under the particular facts in the record before us, we affirm the determination of the Commissioner to dismiss respondent from her tenured

¹ We note, in response to respondent's exceptions, that the record does not support her contention that she had called her supervisor on May 20, 1994 to report her "slip" and to seek his help. Rather, the evidence indicates that respondent had called to express an urgent need to meet with school administrators regarding the impending loss of her substance awareness position as the result of another staff member exercising bumping rights thereto. As previously noted, respondent's supervisor indicated that respondent's disoriented state during her first and second phone calls had prompted his concern. He stated that respondent had appeared out of control and that her conversation had rambled, seemed disjointed and made little sense.

Nor does the record support respondent's contention that the Board failed to provide her with promised accommodations and, in so doing, may have contributed to her "slip." Contrary to respondent's assertion in her exceptions, the Board did not agree in the Health Improvement Program Contract to provide respondent with "an employee assistance program, counselling [sic] and support for her in the event she suffered another slip." Respondent's Exceptions, at 4. Rather, that agreement allowed respondent to

employment, as modified herein. Respondent's request for oral argument is denied as not necessary for a fair determination of this matter.

Attorney exceptions are noted.

Jean D. Alexander abstained.

January 8, 1997

Date of mailing _____

complete a drug treatment program and acknowledged respondent's understanding that she would be subject to disciplinary action in the event she ever tested positive for drugs in the future.