

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges Against  
Maria Rodriguez

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**NEWARK BOARD OF EDUCATION,  
-ESSEX COUNTY**

119-5/19

Petitioner

**Opinion  
and  
Award**

- and -

**MARIA RODRIGUEZ**

Respondent

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Before: **Deborah M. Gaines, Arbitrator**

APPEARANCES:

FOR THE PETITIONER:

ADAM S. HERMAN, ESQ.

FOR THE RESPONDENT:

MARIA RODRIGUEZ (pro se)

Pursuant to NJSA 18A:6-16, as amended by P.L. 2012, c.26 and P.L. 2015, c. 109("TEACHNJ"), the tenure charges brought by the Newark Board of Education ("the District" or "Petitioner") against Maria Rodriguez ("Rodriguez" or "Respondent") were referred to me by the Bureau of Controversies and Disputes for a hearing and Decision on July 18, 2019. I conducted a hearing at

the offices of the New Jersey Board of Mediation on September 19, 2019.

The Respondent represented herself at the hearing. However, she was not represented by Counsel. The undersigned had sent multiple communications to Respondent prior to the hearing, advising Respondent of the seriousness of the proceeding and the recommendation to obtain counsel. The undersigned repeated this recommendation at the hearing, but Respondent indicated she wished to proceed without counsel. At the hearing, the parties had full and fair opportunity to examine and cross-examine witnesses, introduce documentary evidence and make argument in support of their respective positions. The hearings were transcribed. The District submitted a written closing statement and Respondent sent multiple emails regarding the matter. The record was declared closed on October 25, 2019

### **THE CHARGES**

Respondent is charged with incapacity, insubordination and conduct unbecoming as described in Board's Statement of Tenure Charges. The charges provide:

Charge Number One

(Incapacity: Inability to Perform Duties)

Ms. Rodriguez is guilty of Incapacity by way of the following:

- a. At all times relevant, Ms. Rodriguez has been employed by the district as a teaching staff member.
- b. Ms. Rodriguez was first hired by the District to serve as a special education teacher beginning in January 1999.
- c. Ms. Rodriguez was most recently assigned as a teacher of home instruction.

- d. Ms. Rodriguez has been, and is, incapable of fulfilling her duties as a teacher.
- e. In October 2012, Ms. Rodriguez underwent a psychiatric examination, which included an assessment of Axis I, Axis II, Axis III, Axis IV and Axis V.
- f. By way of report dated October 15, 2012, it was determined Dr. Mario Finkelstein that Ms. Rodriguez was "not fit to return to work as a teacher for the Newark Public School" at that time.
- g. As part of Dr. Finkelstein's diagnosis, he opined as to certain findings under Axis I.
- h. Upon medical clearance several month later, Ms. Rodriguez returned to work as a home instruction teacher.
- i. On or about September 21, 2017, after Ms. Rodriguez continued to exhibit conduct deviating from normal mental health of a teaching staff member, she was placed on paid administrative leave.
- j. On or about September 22, 2017, Ms. Rodriguez was directed to undergo a fitness for duty psychiatric examination.
- k. A work status form dated November 13, 2017 from the Jersey City Medical Center determined that Ms. Rodriguez was not "fit for duty."
- l. On December 11, 2017, Ms. Rodriguez was evaluated by Dr. Mary Ann Kezmarsky, a New Jersey Licensed Psychologist.
- m. By way of report dated December 11, 2017, Dr. Kezmarsky diagnosed Ms. Rodriguez.
- n. Dr. Kezmarsky's report, in part, states the following:

Given the continued reports of her behavior that are causing problems at school, it is my opinion that she is not fit to return to her position at this point [and] . . . it is highly likely that she is going to make a dramatic change.
- o. As a result of Ms. Rodriguez's inability to return to work, she remained on paid administrative leave pending the results of a follow up psychiatric examination.
- p. A follow up fitness for duty psychiatric examination was scheduled in April 2018. However, Ms. Rodriguez did not attend the examination.
- q. In August 2018, Ms. Rodriguez underwent treatment at University Hospital.
- r. A follow up fitness for duty psychiatric examination was rescheduled for February 14, 2019.
- s. Ms. Rodriguez failed to appear at the February 14, 2019 examination.
- t. Ms. Rodriguez has been and is incapable of fulfilling her duties as a teaching staff member.

u. Ms. Rodriguez is not fit for duty as a teaching staff member.

Ms. Rodriguez's medical condition as described above constitutes Incapacity by a tenured teaching staff member sufficient to warrant dismissal from employment.

Charge Number Two

Insubordination: Failure to Attend IME

Ms. Rodriguez is guilty of Insubordination by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. A follow up fitness for duty psychiatrist examination for Ms. Rodriguez was scheduled on April 3, 2018.
- c. The April 3, 2018 fitness for duty psychiatric examination for Ms. Rodriguez was re-scheduled for April 24, 2018.
- d. Ms. Rodriguez did not attend the April 24, 2018 fitness examination.
- e. A follow up fitness for duty psychiatric examination was re-scheduled for February 14, 2019.
- f. Ms. Rodriguez refused to appear at the February 14, 2019 fitness for duty psychiatric examination.
- g. Ms. Rodriguez's inappropriate and unprofessional conduct violated law and District policy.
- h. Ms. Rodriguez's actions were sufficiently flagrant and egregious to warrant termination.
- i. Ms. Rodriguez's actions demonstrate that she is not fit to serve as a support staff member.
- j. Ms. Rodriguez has been, and it, incapable for fulfilling her duties as a teaching staff member.

Ms. Rodriguez's willful and intentional misconduct as described above constitutes Insubordination by a tenured teaching staff member sufficient to warrant dismissal from employment.

Charge Number Three

Conduct Unbecoming: Failure to attend IME

Ms. Rodriguez is guilty of Conduct Unbecoming by way of he following:

- a. The District repeats and reiterates the allegations in all the Charges set forth above.
- b. Ms. Rodriguez did not attend the April 24, 2018 fitness examination.
- c. Ms. Rodriguez also refused to appear at the February 14, 2019 fitness for duty psychiatric examination.
- d. Ms. Rodriguez's inappropriate and unprofessional conduct violated law and District policy.
- e. Ms. Rodriguez's actions were sufficiently flagrant and egregious to warrant termination.

- f. Ms. Rodriguez's action demonstrate that she is not fit to serve as a teaching staff member.
  - g. Ms. Rodriguez has been, and is, incapable of fulfilling her duties as a teaching staff member.
- Ms. Rodriguez's willful and intentional misconduct described above constitutes Conduct Unbecoming by a tenured teaching staff member sufficient to warrant dismissal from employment.

Charge Number Four

Conduct Unbecoming: Improperly Reporting to Work to Sign IN  
and Sign Out While on Leave

Ms. Rodriguez is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. On or about September 21, 2017, Ms. Rodriguez was notified by the District that she was being placed on paid administrative leave until further notice.
- c. Ms. Rodriguez ignored said notification and reported to work on September 25, 2017.
- d. On September 25, 2017, Ms. Rodriguez was reminded again that she was on paid administrative leave until further notice.
- e. Ms. Rodriguez was subsequently placed on illness leave by the District in March 2018.
- f. Despite being on illness leave, and being directed not to report to work, Ms. Rodriguez visited various District locations between April 17, 2018 and April 25, 2018 to clock in and out of work.
- g. Said locations included the Family Support Center, Camden Middle School, Cleveland Elementary School and Central High School.
- h. Ms. Rodriguez's inappropriate and unprofessional conduct violates Board policy and law.
- i. Ms. Rodriguez's intentional actions are sufficiently flagrant and egregious to warrant termination.
- j. Ms. Rodriguez's intentional actions demonstrate that she is not fit to serve as a teaching staff member.

Ms. Rodriguez's willful misconduct as described above constitutes Conduct Unbecoming sufficient to warrant dismissal from employment.

Charge Number Five

Conduct Unbecoming: Improperly Reporting to Work to Sign In  
and Sign Out While on Leave

Ms. Rodriguez is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. Despite being on illness leave, Ms. Rodriguez visited the District's facility at 301 West Kinney Street on February 4, 2019 to clock in and out of work.
- c. Ms. Rodriguez's inappropriate and unprofessional conduct violates Board policy and law.
- d. Ms. Rodriguez's intentional actions are sufficiently flagrant and egregious to warrant termination.
- e. Ms. Rodriguez's intentional actions demonstrate that she is not fit to serve as a teaching staff member.

Ms. Rodriguez's willful misconduct as described above constitutes Conduct Unbecoming sufficient to warrant dismissal from employment.

#### **BACKGROUND**

This case arises out of charges of incapacity, insubordination and conduct unbecoming. Respondent is a tenured teacher who has been employed by the District since approximately 1997. Her last position was as a home instructor.

In 2012, Respondent was directed to undergo an independent medical examination (IME) based on her behavior. The IME found her to be unfit for duty. She received medical clearance to return to work in 2013.

According to Homere Breton, Executive Legal Assistant and 504 Accommodation Officer, testified he received reports of strange and upsetting behavior from the Grievant in 2017. As the 504 Accommodation Officer, Breton is responsible for the

intake of requests for accommodation as well as making arrangements for employees to undergo IME, when required.

Breton testified that beginning in September 2017, reports of Respondent "acting out of sorts" began again. He received documents from Principal of Home Instruction Gerald Samuels. One staff member reported she overheard Respondent talk about the need to protect herself and that she had a permit to carry a gun. The person also reported she heard her speak badly of Muslims and unwed mothers. [See, District Exhibit 8] Breton testified he also received a letter from Rev. Dr. David O. Carter that was sent to Principal Samuels. It noted that he has been called on to intervene numerous times between Respondent and co-workers. He wrote:

I have had to go downtown on one occasion to the Newark Public Schools Law Office as her representative for antagonizing her fellow colleagues, stating fictitious accusations, and numerous arguments. This is all factual, documented, and this problem has escalated to the point where something has to be done to correct a now volatile problem. [District Exhibit 9]

Another teacher, Eneida Dias-Castro also sent a letter to her principal about her observations of Respondent. They included racial comments, yelling incoherently, making unfounded accusations. [District Exhibit 10].

According to Breton, these concerns warranted sending her to the IME, especially in light of her prior history. He testified she was sent to Jersey City Medical Center, RWJ

Barnabus Health. She was determined to be unfit for duty.

[District Exhibit 12] She was referred for a psychological IME with Dr. Mary Ann Kezmarsky. Dr. Kezmarsky issued a Fitness for Duty Evaluation. She diagnosed Respondent with Delusional Disorder, Paranoid Type.

The report provided further:

Given the continued reports of her behavior that are causing problems at school, it is my opinion that she is not fit to return to her position at this point in time. She most likely could be helped by psychiatric medications as well as psychotherapy, though given the longstanding issues that this has undergone, it is highly unlikely that she is going to make a dramatic change. [District Exhibit 13]

Respondent was then placed on medical leave.

Breton testified he sent follow up letters to the Respondent's Union representative advising him that a follow-up evaluation was scheduled for April. [See, District Exhibits 14, 15, 16] According to Breton, Respondent failed to appear for the follow-up examination.

He further testified that Respondent violated the rules regarding her leave status, by showing up at various sites to clock in to work. He explained that when on such leave, she was not allowed on school property. He submitted a punch report showing her attempts. [District Exhibit 17].

Principal Samuels testified he spoke with Respondent on April 17, 2018. He told her that she was not allowed to return



to work because of her leave status. However, he testified, she returned at the end of the day to clock out. She continued to do so on April 18, 19, 20, 23, and 24.

As a result of Respondent's attempts to clock in, the Security Department to advise that she was not allowed on site. On one occasion the Newark Police Department was called.

Breton testified that on October 31, 2018, Respondent went to a location referred to as Zion Towers to attempt to provide services as a home instructor. It was reported to the District she attempted to enter the building and became rude when told to leave. The incident report provided in relevant part:

Maria Rodriguez refused to show I.D. to enter building. I informed her all visitors must sign in with security. Rodriguez then proceed to tell me she doesn't have to show ID because she has her PhD and finished school all the way. I then informed Rodriguez that she was being disrespectful and the she would have to leave the property Rodriguez proceeds to tell by stating that their living in jail. Tenants felt disrespected and approached Rodriguez. I (s/o Smith) informed Rodriguez if she didn't leave I would call the police. Which I did to defuse the situation between Rodriguez and the bystanding tenants.

Respondent also clocked in at a District site on February 4, 2019. Breton testified she was on illness leave at this time as well. He noted she attempted to clock in at a District site even though she was still on illness leave and was not allowed to be on site.

The District continued to attempt to have Respondent undergo a medical examination. On January 28, 2019, Mr. Breton

sent Respondent another letter directing her to undergo a follow-up psychiatric IME with Dr. Kezmarsky on February 14, 2019. The letters advised Respondent that her failure to comply with the directive could result in disciplinary action. The District also sent a letter to her counsel advising of the follow-up IME. On February 13, 2019, her attorney Steven Schuster, sent the District a letter indicating he advised her to attend the examination. However, on February 14, 2019, Dr. Kezmarsky advised Breton by letter that Respondent failed to appear for the examination. [District Exhibit 27]. Dr. Kezmarsky copied Respondent on the email she sent to Breton.

In May 2019, Respondent sent an email to Mr. Breton which read:

I am not your show and none of that. Tried to confused me with "you have to pay some liability" of the liability tort of the Constitution and instead you sent me to a tort doctrine of the indenture servants of the Brit. They are under the Brexit order right now after the Declaration of the Independence and the expulsion from Breogan. I am the public system not he private schools of the Brit, therefore my position in the public schools belongs to me first not to the Brits and not to the civil rights and disobeying the law, a lot of those lost their rights specially the right to vote for others. [District Exhibit 28]

Respondent decided not to be represented by Counsel. The undersigned allowed her to testify in a narrative form to address any issues she believed were important. Respondent claims these charges are retaliation for a complaint she raised

in 2010 against another teacher. She testified that others were pushing her to have a sexual relationship with her.

With respect to the IME report, Respondent asserts she is fully capable of working. She testified that she answered over 600 written questions in the appointment, most of them relating to sex.

### **Positions of the Parties**

#### **Position of the District**

The District argues it has proven the charges by a preponderance of the evidence. With respect to the charge of incapacity, it argues the education statute and supporting caselaw demonstrate the concept of fitness to teach is based on a broad range of factors, including "whether there is any harm or injurious effect which the teacher's conduct may have upon the maintenance of discipline and the proper administration of the school system." [District Brief at 14].

It argues the 2017 IME report establishes Respondent's incapacity. It notes the December 2017 indicates Dr. Kezmarsky conducted a thorough review. It included interviews with Respondent as well as the administration of 5 psychiatric tests. The diagnosis of delusional disorder; paranoid type led her to conclude Respondent's incapacity at that time.

The District maintains that despite repeated attempts to re-evaluate Respondent, she has failed to comply with these directives. Thus, it can only conclude that she remains incapacitated and, thus, unable to perform her job duties.

The District argues the Respondent has been insubordinate by refusing the District's lawful directives to undergo a follow-up IME to determine her medical status. Likewise, it argues, it has also demonstrated she has committed unprofessional conduct and insubordination by clocking in and out of work when she is not allowed to be on school property as well as being confrontational when told to leave.

#### Position of Respondent

As noted earlier, Respondent represented herself in this proceeding. She rejected her Union representation and although urged by the undersigned to obtain counsel, she declined. At the hearing, she stated she could not afford private representation.

As a result, the undersigned provided Respondent latitude in addressing the charges. Respondent did not submit a final closing statement, but rather sent messages and copies of laws or articles she believed relevant to the proceeding.

Rather than summarize, I have copied relevant portions of her statements.

On October 22, 2019, she wrote:

[referring to the binder of evidence submitted by the District]

The 3 ring binder does not address the legal characteristics of a teacher tenure charges, it addresses the characteristics of a morgue summary instead. Therefore "all charges dropped by prejudice" it means they can't be revive again. Reinstate my payroll instead that I am entitled to and stop the imbecility.

On October 25, 2019:

It was replied with evidence that the charges belong to my colleagues not to me. They are having a lot of intra personal and inter personal relationships problems due to lack of knowledge of the law of USA along with no faith or other different from the Christian/Masonic, the morality and they display the opposite at work, during lunch and after work punching the Kronos and going back up to the 2rd. Floor to conduct serious business until late at night. They aren't my charges and it is felony and treason to a citizen of USA, myself.

Remove them by dropped of charges with prejudice and pay me my salary as the most fit for the position. I have morality and teach the subjects to the contrary from my colleagues, they are immoral and instead of teaching the subjects they write to others as therapy of their problems.

Finally, respondent forwarded a letter send to "Judge C." which read:

Case:#2:19-CV-05842-CCC-JBC

Your Honor:

I have received another repetition of the same when it was solved and I am cleared to return to work.

This repetition isn't normal, the board of Ed. Sent 24 pages repeating the word "fit" an average of 5 times on each page, which it accounts for about 120 times repeating the same word "fit". I never saw anything like it

Another pattern that I encountered of repetition was to repeat mandatorily appointments for no reason of \$1,900.00 cash from Homere's Breton pocket where on two consecutive years I had to go for a letter of fit already in existence and cleared to return to work on Christopher Columbus Day and at 11:00 a.m. not option of rescheduling the appointment or it will be a threat of insubordinate, disobedient, bad conduct, etc., opportunity for writing charges against me and I would have to pay the cash from my pocket when I had Aetna insurance at that time. Other repetitions were appointments for a physical to mandatorily independent doctors at 9:00 a.m. when I

had my doctor to go to if I needed. After collecting all the letters of fit they told me that I was rescheduled to do it again using the same pattern of appointments at 9:00 a.m. 11:00 a.m. and as well a series of repetitions involving mandatorily appointments for no reason at 3:00 p.m. this to go to Ho HO Ho Kush of Homere's business friends. Asking for the reason to it, was an opportunity for them to write word charges against me, the same over and over. I received orders which is prohibited under the Constitution of USA where we the people hold the power and don't live in fear under the law. They are above the law ones.

During the workshops which were banned a long time ago in the Public Schools, the board sent the employees a letter stating that the board of Ed. Has the right to throw us workshops any time they wanted, it is illegal, only to create problems and write me more word charges, when trying to participate in the dialogues, I was considered insubordinate and sabotage for no reason, when working in groups I was isolated and mocked, throwing prepared math applications with the answer sheet pretending holding the power. I know the content of the subjects I teach and they don't, this was an opportunity for engaging in immoral conduct to obtain favors as the answer keys they were throwing to the students instead of teaching the curriculum, it is negligence. The word tiered was the leading word of all the workshops very characteristic of the style of the columns supporting the arches of the ancient Mosques.

To engage in this type of repetition coupling with the socialization of brothers and sisters instead of Mr. and Mrs. walking the hallways embracing each other, female/male and very intimately, the Principal Samuels walking the hallways with a baby bib around his neck and looking at the females with a dirty look was an incitation or provocation to sex in his secret room he held across his office, telling me in one occasion, "you can come too, I have something for you as well". He is ill and a sex predator, it happened in the hallway, where there is surveillance.

My personal opinion as a teacher, nurse and psychologist, I recommend them, all the ones involved in accumulating harmful bad intentional words against me to instead take the test DSM-5 or diagnostic statistical manual to take care of their intellectual disability characterized by limitations in both intellectual functioning and adaptive behavior. They feel inferior to me mainly because of my ability to speak other languages and be certified to teach them and they aren't.

Due to persistent repetition of the same, they may suffer from spectrum disorder, which can cause impairment in important areas of life as performing daily schedules or readjustments in their lives.

Probably factitious disorder is applicable as well, this happens when an individual intentionally creates, fakes or exaggerates something that is irrelevant, probably to attract attention. When engaged in factitious behavior obsessive and disruptive eating patterns happens and they are always eating and chewing gum, socking hard candy and repetitive talking without given others turns to have a fluent conversation.

Conduct disorder is very characteristic of them, Homere Breton and his gang called team, when a team isn't required to work home instruction. They violate the social norms and the rights of others, individuals or in groups display aggression toward people, Eneida Dias Castro hit me twice at work, she suffers from bipolar disorder and

misconduct at work, destroys property, Eneida broke my telephone at work and Shareida Tarver, stole Zuleika's phone during work because this student took a picture of her sleeping instead of imparting education to the student, the student's mother got it back, Tarver slapped the student's face and through all the items from the table to the floor, she created a tsunami in the student's house during instruction time and let the student play Pokemon instead, this is to destroy others property and conduct disorder, all of my colleagues deceive along with the board of Education and violate others rules of the law. These types of behavior result in significant problems at work, intra and inter personal functioning, they refuse to comply with the requests all the time resulting in repetition of the same for no reason and engage in behaviors to deliberately annoy others. They do it for fun and is a serious mental problem.

Your honor drop the charges of repetitive words they invented into my persona, my tenure is legal as well as my teaching proceedings and social interaction and let me get back to work. I am cleared to go back to work and the imbeciles of the board of Ed. Persecute me around prohibiting me the entrance to the public schools which they are my business of the law, the Constitution. I am a 100% professional and the board and my colleagues don't hold the credentials to fit in the Public System, they are a shame to have them as staff members and the parents of the students make comments about them as well, the teachers don't teach and the principal falls asleep while observing the teachers and without a license to write comments and they don't comprehend why they still at work.

Cordially;

Maria Rodriguez; Licensed Teacher

### Decision

After carefully considering the entire record before me, including my assessment of witnesses' credibility and the probative value of evidence, I find the Board has met its burden under the statute to sustain the charge of Incapacity. My reasons follow.

At issue in this case is the Incapacity of the Grievant. The record evidence demonstrates the Grievant was placed on illness leave after being examined by the IME as being unfit for duty as a result of a diagnosis of delusional disorder, paranoid

type. The psychiatrist found there was little hope for dramatic improvement, although she recommended therapy and medication.

Contrary to Respondent's assertions, I find the decision to refer the Grievant for an IME to have been justified. I credit Mr. Breton's testimony that he received numerous complaints regarding Respondent's irregular behavior, which included making derogatory comments about muslims and unwed mothers, accusations of improper sexual behavior with no evidence and telling individuals she was permitted to carry a gun. Given her prior history of mental incapacity, he was more than justified in seeking a medical examination of Respondent to determine fitness for duty.

The IME included a detailed report indicating extensive testing and interviews with Respondent to reach her conclusions. Thus, I find Respondent was determined to be incapacitated upon reasonable medical evidence.

At this time, no evidence has been submitted to refute or change the determination of the IME. In fact, Respondent has failed to undergo follow-up examinations after being ordered to do so on multiple occasions. Thus, not only does the evidence show she is currently not fit for duty, she has failed to follow lawful direction.

The undersigned, however, finds insufficient evidence to conclude Respondent was insubordinate and/or engaged in conduct



unbecoming. Clearly, her failure to follow direction and also disruptive behavior meets those standards. However, given the medical diagnosis, it is not clear in this record whether Respondent had requisite intent. Without testimony from a psychiatrist, I do not find it necessary to reach a conclusion on these charges.

The undersigned determines the record evidence is sufficient to discharge the Respondent from service. The District provided her with extensive medical leave to care for her health. There is no evidence of further treatment and she has not. She has been given lengthy leave with the intent to restore her to health. However, her failure to undergo treatment and abide by needed follow up examinations has left the District with no choice but to discharge her from service. The undersigned finds no reason to disturb that decision.

**AWARD**

The charges of Incapacity are substantiated. The District has demonstrated just cause for termination.

*Debal Ganes*

Dated: November 25, 2019

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Deborah Gaines, Arbitrator

Affirmation

State of New York }

County of New York } ss:

I, DEBORAH GAINES, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: November 25, 2019

*Deborah Gaines*

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