

IN THE MATTER OF THE TENURE :
HEARING OF RANDI TRUE, SCHOOL : COMMISSIONER OF EDUCATION
DISTRICT OF THE TOWNSHIP OF : DECISION
WILLINGBORO, BURLINGTON COUNTY :

SYNOPSIS

The petitioning Board certified tenure charges of excessive and chronic absenteeism, unbecoming conduct, insubordination, and other just cause against respondent – a special education teacher employed by the district – for behavior that included excessive tardiness and leaving early, using demeaning language with her students, leaving students unattended in the hallway, pushing one of her students, and disobeying a directive from the superintendent. The Board sought removal of respondent from her tenured position.

The ALJ found, *inter alia*, that – based on the evidence and testimony presented at hearing – the Board met its burden of establishing by a preponderance of the credible evidence that respondent is guilty of: chronic and excessive absenteeism and tardiness, use of name-calling and other demeaning language toward her students, failure to properly supervise the students in her charge; and willfully refusing to comply with an explicit directive from the superintendent. The ALJ dismissed the charge relating to pushing a student for lack of competent and credible evidence. The ALJ concluded that respondent’s behavior constituted incapacity, unbecoming conduct, insubordination or other just cause warranting dismissal and, accordingly, ordered respondent dismissed from her tenured employment.

Upon independent review of the record, the Commissioner 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 against her certificate(s) 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>

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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 the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the respondent and the Board of Education's (Board) reply thereto.

In her exceptions, the respondent contends that the Administrative Law Judge (ALJ) erroneously found respondent guilty of unbecoming conduct, insubordination, and other just cause warranting the dismissal of her employment. The respondent argues that the ALJ erred in finding that she was excessively tardy because the documented evidence did not support such a finding. With respect to the Board's charge of excessive absenteeism, the respondent maintains that the ALJ wrongfully determined that the Board satisfied the three prongs required by *In re Tenure Hearing of White*, 92 *N.J.A.R.2d* (EDU) 157, 161 in order to terminate an employee for excessive absenteeism. Specifically, the respondent argues that the Board did not satisfy the third element of the *White, supra*, test because it did not give the respondent the requisite warning that her absences were a concern to the administration.

Additionally, the respondent takes exception to the ALJ's finding that the Board proved that the respondent's use of inappropriate language with her students constituted unbecoming conduct. The respondent argues that the testimony of the three staff members who

testified to the inappropriate language used by the respondent was not credible and that the context of her use of certain words and phrases were explained by the respondent during her testimony. In connection with the charge of failing to supervise her students, the respondent maintains that even if it were determined that she failed to supervise her students on one occasion, that behavior did not rise to the level of conduct that would require removal of her tenure. Finally, the respondent argues that the ALJ erroneously found that the respondent was insubordinate when she sent a text message to another staff member despite the interim superintendent's directive that she was not to contact anyone at the school once she was told of her transfer. The respondent emphasizes that she did not believe that the sending of a text message was part of the directive.

In its reply, the Board urges the adoption of the Initial Decision asserting that the respondent's exceptions are without merit and should be given no weight. The Board contends that the respondent's claim that she only received one written warning regarding her excessive absenteeism is unsupported by the record and overlooks the numerous written and verbal warnings that the respondent received over an extended period of time. The Board also argues that the respondent's exceptions side-step the troubling aspect of the respondent's excessive tardiness, including the fact that she misstated arrival times and left the premises without permission, as well as the negative impact of her numerous late arrivals.

Additionally, the Board notes that the respondent's exceptions challenge the ALJ's credibility determinations in connection with his finding that the respondent used inappropriate language with her students. The Board stresses that the testimony of the other staff members supports the ALJ's findings and it is well settled that the Commissioner may not reject or modify the credibility findings of the ALJ unless they are arbitrary, capricious, unreasonable

unsupported by the record. Finally, the Board maintains that the respondent's failure to supervise her special needs students coupled with her uncaring attitude justifies her removal.

Upon a comprehensive review of the record in this matter, which included the transcripts of the hearings conducted at the OAL on October 5, October 26, and November 9, 2010, the Commissioner concurs with the ALJ – for the reasons discussed on pages 28-43 of the Initial Decision – that the Board has proved that the respondent is guilty of chronic absenteeism, unbecoming conduct, and insubordination warranting the termination of her employment.

The record demonstrates that the respondent has been chronically absent throughout her employment as a special education teacher in the district, and despite the argument presented by the respondent in her exceptions, she was given several warnings from the administration concerning the impact of her continued absence. The record also illustrates that the respondent has been tardy on numerous occasions, and in fact the respondent generally did not provide any rationale for her lateness nor did she dispute the testimonial evidence except her challenge to one specific occasion where the Board alleged that the respondent arrived late and wrote an earlier time on the sign-in sheet.

With respect to the other charges – including: the respondent's use of inappropriate language with her special needs students; her failure to properly supervise her students; and the charge of insubordination – the Commissioner also finds respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by him in weighing the testimony and evidence, and in concluding that the record overall supported the Board's charges. Although the respondent either denied the use of certain phrases or attempted to explain the context of others, the ALJ had

the opportunity to assess the credibility of the various witnesses who appeared before him and made findings of fact based upon their testimony. Moreover, the respondent did not deny the fact that she remained in her classroom while two of her special needs students were fighting in the hallway and had to be stopped by other staff members, or that she sent a text message to her co-worker despite the interim superintendent's directive; rather, respondent simply provided spurious excuses for her conduct. Insofar as the ALJ's opinion on these issues is a credibility determination, the Commissioner may not disturb it unless a review of the record discloses that it is arbitrary, capricious or unreasonable. *N.J.S.A. 52:14B-10c; D.L. and Z.Y., on behalf of minor children, T.L. and K.L. v. Board of Education of the Princeton Regional School District, 366 N.J. Super. 269, 273 (App. Div. 2004).*

The Commissioner fully concurs with the ALJ's assessment of respondent's conduct in light of applicable law and prior decisional precedent, and agrees that the conduct proven in this proceeding amply warrants respondent's dismissal from her tenured employment. Accordingly, for the reasons expressed therein, the Initial Decision of the OAL – directing removal of respondent from her position of tenured employment – is adopted as the final decision in this matter. A copy of this decision will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 15, 2011

Date of Mailing: August 16, 2011

¹ This 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)*