

#300-11 (OAL Decision: Not yet available online)

WESLEY GILMER, :

PETITIONER, :

V. :

STATE-OPERATED SCHOOL :  
DISTRICT OF THE CITY OF NEWARK, :  
ESSEX COUNTY. :

RESPONDENT. : COMMISSIONER OF EDUCATION

AND : DECISION

IN THE MATTER OF THE TENURE :  
HEARING OF WESLEY GILMER :  
STATE-OPERATED SCHOOL :  
DISTRICT OF THE CITY OF NEWARK, :  
ESSEX COUNTY. :

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SYNOPSIS

The Board certified 19 charges of inefficiency against respondent – a tenured teacher employed by the district since 1997 – for poor teaching performance, including unsatisfactory pedagogical technique, inadequate classroom management, and failure to meet professional obligations such as, *inter alia*, timely submission of lesson plans, management books, and report cards. Respondent contended that the tenure charges were baseless; that he is an effective, dedicated, and well-regarded teacher; and that the unfair charges resulted from a contentious relationship with the principal whom he worked under in his most recent teaching assignments. The Board sought dismissal of respondent from his tenured employment.

The ALJ found, *inter alia*, that: the Board carried its burden of proving the tenure charges of inefficiency against respondent; the district repeatedly attempted to encourage professional improvement over the course of many years, did not act precipitously or prematurely in the filing of tenure charges against respondent, and provided him the support contemplated by *N.J.S.A. 18A:6-11*; respondent had the commitment and love of children necessary to be an effective educator, but was unwilling to use those positive qualities in a professional manner within the curricular and pedagogical framework of the district; respondent countered the charges against him with denials of personal responsibility; respondent’s attitude created no confidence that he would be responsive to continued district efforts to assist him in the future; and respondent has not demonstrated that the district violated his rights when it withheld his salary increment prior to the filing of tenure charges. Accordingly, the ALJ concluded that respondent should be dismissed from his tenured employment and, and further affirmed the withholding of respondent’s salary increment.

Upon comprehensive and independent review of the record, the Commissioner adopted the Initial Decision as the final decision in this matter and dismissed respondent from his tenured position. A copy of the decision was transmitted to the State Board of Examiners for action as that body deems appropriate.

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.

July 28, 2011

OAL DKT. NOS. EDU 13895-08, EDU 13560-09 (CONSOLIDATED)  
AGENCY DKT NOS. 317-10/08, 296-10/09

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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 School District's (District) reply thereto.

The respondent takes exception to the Administrative Law Judge's (ALJ) determination that the District proved the charges of inefficiency against him, and that the District's decision to deny his increment was not arbitrary, capricious or unreasonable. The respondent maintains that the District did not provide positive assistance to help him overcome his alleged inefficiencies during the 90-day and extended improvement period<sup>1</sup> (Improvement Period) as required by *N.J.S.A. 18A:6-11* and *Rowley v. Board of Education of the Manalapan-Englishtown Regional School District*, 205 *N.J. Super.* 65 (App. Div. 1985). The respondent

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<sup>1</sup> The initial 90-day improvement period began on January 30, 2009 and was later extended by the District until June 30, 2009. The respondent went out on medical leave effective May 18, 2009, therefore the Improvement Period lasted for approximately 138 days.

argues that the District and Principal Hartsfield simply conducted evaluations during the Improvement Period without providing the required cohesive assistance and support. Additionally, the respondent contends that the findings contained in the Collaborative Assessment for Planning and Achievement Report for the Quitman School raise serious questions about Principal Hartsfield's credibility on issues related to whether cohesive support and assistance were provided to the respondent.

In his exceptions, the respondent also argues that the District failed to adhere to its own policy for evaluating respondent's performance, which states that ten observations – including four formal and six informal – shall be conducted during the 90-day improvement period. Respondent points out that, in his case, nine informal and three formal observations were conducted by the District. Additionally, the respondent argues that after the extension of the original 90-day improvement period, the District improperly failed to provide him with an updated improvement plan that took into account his improvement and noted any additional deficiencies. The respondent also contends that the District did not give him adequate time to make improvements since it authorized his medical leave during the Improvement Period. Finally, the respondent maintains that – contrary to the ALJ's assessment – dismissal is not required because the respondent has had positive evaluations during his 13 years of service with the District, and that he should be given another opportunity to prove himself without the tension caused by the bad relationship that he had with Principal Hartsfield.

In reply, the District urges the adoption of the Initial Decision asserting that the respondent's exceptions simply reiterate the unsuccessful arguments made by the respondent throughout the proceedings. The District generally maintains that over the course of three consecutive schools years, the respondent exhibited severely deficient teaching performance

which was observed by several different performance evaluators. Additionally, the District emphasizes that the record established that the respondent was afforded substantial positive assistance. In reply, the District also references certain findings made by the ALJ in the Initial Decision that directly contradict the respondent's exceptions.

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the hearing dates conducted at the OAL between April 30, 2010 and February 4, 2011<sup>2</sup>, the Commissioner concurs with the ALJ – for the reasons discussed on pages 31-37 of the Initial Decision – that the District has proven the inefficiency charges brought against the respondent. The Commissioner is also in accord with the ALJ's determination that the District's decision to withhold the petitioner's increment for the 2008-2009 school year was not arbitrary, capricious or unreasonable.

Despite the arguments and objections presented by the respondent in his exceptions, the record overwhelmingly demonstrates that the District provided the respondent with the assistance required by *N.J.S.A. 18A:6-11*, and that he was given ample opportunity to overcome his deficiencies. During the Improvement Period, the District took various steps to help the respondent cure his inefficiencies by: providing him with assistance from content coaches and resource teacher coordinators; giving him the opportunity to observe other classrooms; coordinating the observations of respondent's teaching method by a variety of outside administrators that included an opportunity for him to conference before and after the observation; and providing him with the resources available to the teachers during weekly grade level meetings. Moreover, with respect to the assistance provided by the District, the ALJ found the respondent's testimony to be incredible, noting that, "the respondent's protestations that he

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<sup>2</sup> According to the Initial Decision there were 23 hearing dates at the OAL. The record does not include a transcript from the hearing on March 9, 2010 or September 21, 2010.

was unassisted during his improvement period are not credible.” On the other hand, the ALJ found that the school’s administration repeatedly rated the respondent’s teaching performance as unsatisfactory, and she found no cause to question the credibility or sincerity of the performance evaluators. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony. Insofar as her opinion on this issue 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).

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that the “[f]actors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the individual’s prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring.” *In the Matter of the Tenure Hearing of Deborah Suitt-Green, State-operated School District of the City of Newark, Essex County*, decided by the Commissioner October 14, 1997, slip. op. at 32, citing *In re Hearing of Ostergren, Franklin School District*, 1966 *S.L.D.* 185; *In re Hearing of Kittell, Little Silver School District*, 1972 *S.L.D.* 535, 541; *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967).

It is apparent from the record that the respondent has been unwilling or unable to improve his performance in the classroom despite the extensive efforts of the District. The respondent’s defenses to the charges against him range from complete denial to allegations that the charges were drummed up because of Principal Hartsfield’s alleged vendetta against him, a stance which is completely inconsistent with the testimonial and documentary evidence.

Remarkably, during the course of the protracted proceedings the common theme advanced by the respondent consisted of a litany of excuses as to why the District was not doing enough to make him a better teacher, despite the fact that the evidence showed that the District provided the respondent with the requisite support and assistance during the Improvement Period, and even well before it was implemented. It is troubling that the respondent has been completely incapable of recognizing that at some point a struggling teacher has to take responsibility for his own actions and shortcomings, and should be able to at least demonstrate that he is capable of grasping fundamental teaching principles. As a result, the Commissioner does not find that the record before him provides any indication that the respondent will improve his unsatisfactory teaching performance. Finally, the Commissioner considered respondent's 13 years of employment with the District, and nonetheless determines that the extensive record illustrates that he is unfit to remain in his position.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from his tenured position with the State-Operated School District of Newark. This matter 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.<sup>3</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 28, 2011

Date of Mailing: July 29, 2011

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<sup>3</sup> 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*)