

#368-11 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu05602-11_4.html)

IN THE MATTER OF THE TENURE :
HEARING OF LISA ROSA, SCHOOL : COMMISSIONER OF EDUCATION
DISTRICT OF THE CITY OF JERSEY CITY, : DECISION
HUDSON COUNTY. :

SYNOPSIS

The petitioning Board certified tenure charges of chronic and excessive absenteeism, constituting unbecoming conduct and other just cause, against respondent – a middle school science teacher employed by the district in its accelerated program for high-performing students – for excessive absences over the four year period from the 2006-2007 school year through the 2010-2011 school year. The Board sought removal of respondent from her tenured position.

The ALJ found, *inter alia*, that: the Board had provided respondent with ample warning of its dissatisfaction with her attendance through written evaluations and the withholding of three consecutive annual salary increments; petitioner’s argument that she should not be terminated because none of the Board’s communications specifically warned her in advance that she would be terminated if her record of attendance did not improve is without merit; and the Board sustained its burden of proving that respondent should be dismissed for unbecoming conduct and other just cause pursuant to *N.J.S.A. 18A:6-10*. Accordingly, the ALJ ordered the tenure charges against respondent upheld.

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.

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.

September 1, 2011

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DISTRICT OF THE CITY OF JERSEY CITY, : DECISION
HUDSON COUNTY. :

The petitioning district certified tenure charges against respondent in consequence of four years of chronic and excessive absenteeism, as to which respondent had been both admonished in memoranda, observation forms and evaluations, and penalized by way of increment withholdings. Petitioner did not allege that the reasons for respondent's absences were inappropriate, but rather that the excessive absences hurt the students by consistently interrupting the continuity and coherence of instruction and destabilizing the classroom environment. Upon review of the record, Initial Decision of the Office of Administrative Law (OAL) and respondent's exceptions,¹ the Commissioner concurs with the Administrative Law Judge's recommendation to uphold the charges.

For each of the four years at issue, respondent was absent or tardy for over one quarter of the total days constituting the school year. In fact, during the 2009-10 academic year respondent missed over half of the 182 days of school. This level of absenteeism cannot fail to have a substantial and negative effect upon the quality of the students' education. Thus, the Commissioner and other authorities have previously found that an employee may properly be dismissed for excessive absenteeism, even where valid personal reasons such as illness underlie the absenteeism. *See, e.g., In the Matter of the Tenure Hearing of Grace Folger, Board of*

¹ The Commissioner was not provided with a transcript of the July 20, 2011 hearing.

Education of the Township of Orange, Commissioner Decision No. 147-00, decided May 15, 2000; *In the Matter of the Tenure Hearing of Jerome Kacprowicz, State Operated School District of the City of Jersey City, Hudson County*, 93 N.J.A.R.2d (EDU)152, *aff'd*, State Bd., 93 N.J.A.R.2d (EDU) 604, *aff'd*, App. Div., 95 N.J.A.R.2d (EDU)105; *In the Matter of the Tenure Hearing of Vincent Pellecchio, State-Operated Sch. Dist. of Jersey City*, 92 N.J.A.R.2d (EDU) 271, *aff'd*, State Bd., 93 N.J.A.R.2d (EDU) 30.

In her exceptions, respondent asserts that the problems that caused her excessive absenteeism are behind her, and she will now be able to perform her duties without the frequent interruptions which characterized the past four years. However, under the circumstances of this case, the Commissioner cannot find that petitioner's decision not to take a chance on further disruption is arbitrary, capricious or unreasonable. In the record, examples of the negative effects of respondent's absenteeism are identified. Respondent's high-performing students fell behind their peers in accelerated science classes and had to be reassigned to other full-time science teachers. Parents registered complaints, and undue use of substitute teachers was necessitated.

In sum, the Commissioner finds that respondent has met the standards for termination of a tenured employee for excessive absenteeism as articulated in such cases as *In the Matter of the Tenure Hearing of Lena White, State Operated School District of the City of Jersey City, Hudson County*, 92 N.J.A.R.2d (EDU) 157, 161. More specifically, petitioner 1) considered both the number and the particular circumstances of the absences, (2) assessed the impact of the absences on the continuity of instruction, and (3) gave respondent warning that her supervisors were dissatisfied with the pattern of the absences.

Accordingly, the Initial Decision of the OAL upholding the respondent's dismissal from her tenured position with the Jersey City School District is adopted as the final

decision in this matter. 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.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2011

Date of Mailing: September 6, 2011

² 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*)