

#299-07 (OAL Decision: Not yet available on-line)

IN THE MATTER OF THE TENURE :  
HEARING OF JOHN GUARNI, : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE JUVENILE : DECISION  
JUSTICE COMMISSION. :  
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SYNOPSIS

Petitioner certified tenure charges of unbecoming conduct against respondent -- a tenured special education teacher -- for conduct which included: alleged possession of heroin, a controlled dangerous substance (CDS); and failure to timely report his arrest and criminal charge for drug related activity, in violation of the Juvenile Justice Commission Human Resources Policy.

The ALJ found that: neither respondent's testimony, nor that of the witness arrested with respondent following their May 31, 2006 traffic stop, was credible; the most probable scenario arising from the credible evidence is that the respondent was the knowing possessor of the heroin found in his change purse and under the seat of his car; and respondent's claim that he was unaware that he was arrested on May 31, 2006 for possession of a CDS is unbelievable. The ALJ concluded that respondent's conduct was inappropriate for a tenured teacher and violative of the Drug Free Workplace Policy, and -- whether he was the possessor of the CDS or a knowing facilitator for his companion on the night of their arrest -- as an employee who works for the Juvenile Justice Commission, teaching children who in many cases are themselves involved with illicit drugs, cannot retain the statutory status that tenure brings. Further, respondent should have reported his arrest under the Drug Free Workplace Policy within five days of being charged, and he failed to comply with this policy.

Upon careful and independent review of the record, the Initial Decision of the OAL was adopted as the final decision in this matter, and the Commissioner directed that respondent be dismissed from his teaching position with the New Jersey State Juvenile Justice Commission as of the date of this decision. A copy of this decision has been 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 23, 2007

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Juvenile Justice Commission (JJC) were filed in accordance with *N.J.A.C.* 1:1-18.4. Respondent filed neither primary nor reply exceptions.

The JJC’s exceptions support acceptance of the recommended decision but, however, urge modification of language in the Administrative Law Judge’s (ALJ) Conclusion and Order which it avers would serve to clarify the ultimate intent of the decision. Specifically, it suggests that the ALJ’s terminology that respondent be “stripped of his tenure” be broadened to fully spell out that “respondent is dismissed from his tenured position and that his employment with the Juvenile Justice Commission is terminated.” (JJC Exceptions at 2)

Upon careful review and consideration of the record in this matter, which included a transcript of the hearing conducted at the OAL on May 21, 2007 – and according due deference to the ALJ’s credibility determinations,<sup>1</sup> – the Commissioner determines to adopt the recommended Initial Decision as she concludes that the record before her amply establishes that

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<sup>1</sup> The Commissioner “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” *N.J.S.A.* 52:14B-10(c)

respondent's behavior with respect to the incident surrounding the JJC's tenure charges constitutes conduct unbecoming a teaching staff member. The Commissioner further concurs with the ALJ that respondent's dismissal from his tenured teaching position is warranted.<sup>2</sup>

Accordingly the Commissioner adopts the Initial Decision of the OAL – for the reasons comprehensively detailed therein – and hereby orders that John Guarni be dismissed from his teaching position with the New Jersey State Juvenile Justice Commission as of the date of this decision. This matter shall be transmitted to the State Board of Examiners for action, as that body deems appropriate, against Mr. Guarni's certificate.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: July 23, 2007

Date of Mailing: July 24, 2007

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<sup>2</sup> It is noted that on Page 16 of his decision the ALJ expressed uncertainty as to whether the policy of progressive discipline might have any applicability in this matter. The Commissioner hereby clarifies that the civil service concept of progressive discipline plays no role whatsoever in this matter. Although as a State employee, respondent's employment rights and responsibilities are generally controlled by the provisions of Title 11A and the implementing regulations set forth in Title 4A, as a State employee working as a teacher in a State institution, respondent was granted tenure pursuant to *N.J.S.A. 18A:60-1.1* which specifies:

The Legislature hereby finds that it is in the best interest of the State of New Jersey to provide job security during good behavior and efficiency for the teachers and other certified professional educators in State institutions within the Department of Corrections and the Department of Human Services. To accomplish this goal it is appropriate to provide tenure protection for such professionals teaching in such State institutions *subject to the provisions set forth in this act.* (emphasis supplied)

As such, dismissal or reduction of salary for these individuals for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause is governed by subarticle B of article 2 of chapter 6 of *N.J.S.A. 18A.* (See 18A:60-2), not rules and regulations of civil service.

<sup>3</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*