

RUTH JULIA JONES,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY	:	
OF TRENTON, MERCER COUNTY,	:	DECISION
	:	
RESPONDENT,	:	
	:	
<b>AND</b>	:	
	:	
IN THE MATTER OF THE TENURE	:	
HEARING OF RUTH JULIA JONES,	:	
SCHOOL DISTRICT OF THE CITY	:	
OF TRENTON, MERCER COUNTY.	:	
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SYNOPSIS

Petitioner filed a claim in January 2008 alleging that the Board was violating her tenure rights by not allowing her to return to employment after her physician cleared her to return to work without restrictions effective September 4, 2007. The petitioner seeks reinstatement to a teaching position along with back pay and interest. The Board filed tenure charges against petitioner in May 2008, alleging incapacity for continued employment as a teacher. The two matters were consolidated at the request of the parties.

The ALJ found that: the Board has not demonstrated that the Ms. Jones is incapacitated from being a teacher in the Trenton School District; Jones has demonstrated that the District did violate her tenure rights by not reinstating her following receipt of the November 15, 2007 report of the Board’s own independent medical examiner, which clearly found that Jones was capable of performing the duties of an elementary school teacher for students below the fifth grade; the Board had an obligation at that time to look for vacancies and to determine whether Jones had seniority to exercise bumping rights, and failed to do so. Accordingly, the ALJ concluded that Jones is able to return to work because the Board did not demonstrate that she is incapacitated to do so, and her tenure rights were violated when the Board failed to make any attempt to find an appropriate position for her once she was cleared to return to work. The ALJ ordered that Jones be allowed to return to work as a teacher in the District, and that she is entitled to back pay from November 15, 2007 to the present.

Upon independent and careful review of the record, the Commissioner adopted the Initial Decision as the final decision in this matter and ordered the Board to effectuate the order of the ALJ forthwith.

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.

April 28, 2009

OAL DKT. NOS. EDU 2284-08 AND EDU 4721-08 (CONSOLIDATED)  
AGENCY DKT. NOS. 39-1/08 AND 155-5/08

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The record of this matter<sup>1</sup> and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the Board of Education pursuant to *N.J.A.C. 1:1-18.4*. Petitioner-respondent (Ms. Jones) did not reply to the Board’s exceptions.

In its exceptions, the Board contends that the Administrative Law Judge (ALJ) erred in finding that Ms. Jones was able to return to work without restriction. According to the Board, the testimony of Dr. Hewitt and Ms. Jones herself clearly shows that Jones’ fear, apprehension and anxiety at working in the Trenton Public Schools would not be eliminated – even teaching at a lower grade level – so that her return would do a disservice to both the district

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<sup>1</sup> It is noted that, although the hearing in this matter was conducted over two days, November 18, 2008 and December 5, 2008 (Initial Decision at 2), the record includes a transcript for the November 18, 2008 hearing only. The testimony of Dr. Hewitt and Interim Assistant Superintendent Patricia Lucas was taken on this date and is fully set forth in the transcript, while the testimony of Ms. Jones and Dr. Tobe is on record only through its summation and analysis in the Initial Decision (at 2-5, 7-8).

and its students; the record further demonstrates, the Board avers, that Ms. Jones suffered at least one anxiety attack in 2008 – indicating that she is not ready for the stress that will accompany her return to teaching in an urban environment. (Board’s Exceptions at 1, 2, 3, 4) The Board additionally proffers that Dr. Hewitt’s October 29, 2007 report and November 15, 2007 addendum are – contrary to the finding of the ALJ – more credible and accurate than Dr. Tobe’s October 2, 2008 report, since the former were completed in close proximity to the incidents of “assault” claimed by Ms. Jones, which occurred during the 2006-07 school year. (*Id.* at 1, 2, 3)

The Board also contends – because the record demonstrates that, at the very least, Ms. Jones cannot continue to teach at the intermediate level or higher and must be placed in an elementary level position if she is to return to work – that the ALJ should not have ordered the Board to effectuate such return without: 1) affording it time to determine whether a suitable position exists at the elementary level and whether Jones has bumping rights over teachers currently assigned there; and 2) specifying an alternative remedy in the event no suitable position can be found. (Board’s Exceptions at 2, 3, 4)

Upon review, the Commissioner finds the Board’s exceptions to be without merit and adopts the Initial Decision of the ALJ.

Initially, the Commissioner concurs with the ALJ that the Board failed to prove its tenure charge of incapacity, since the reports (Dr. Hewitt’s) on which it relies were completed well before the filing of tenure charges in May 2008 and over a year prior to the more recent assessment (Dr. Tobe’s) showing Ms. Jones’ bipolar disorder to have been successfully stabilized since that time through medication, therapy and Jones’ own efforts, and opining that – based on such stabilization and continuing positive attitude – Jones is able to return to work

without restriction.<sup>2</sup> The Commissioner further agrees that the Board violated Ms. Jones' tenure rights when it failed, in November 2007, even to attempt to locate a position for her at the level where she was found fully able to function by the Board's own independent medical examiner (Dr. Hewitt).

The Commissioner, therefore, finds the relief awarded Ms. Jones by the ALJ – return to work as a teacher and back pay from November 15, 2007 to the present – to be entirely appropriate. There is no need, as claimed by the Board, for it to be afforded time to locate a “suitable” position at the elementary level, since Ms. Jones has been found able to work without restriction and is thus entitled to be placed in any teaching position within the scope of her certification that is held by a nontenured or less senior staff member; nor is there a need for specification of an alternative remedy, since, if no position currently exists to which Ms. Jones may lawfully claim entitlement, she must be placed on the Board's preferred eligible list for reemployment when such a position does become available.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter and the Board is directed to effectuate the order of the ALJ forthwith.

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

#### COMMISSIONER OF EDUCATION

Date of Decision: April 28, 2009

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<sup>2</sup> It is of no moment that Dr. Hewitt's reports were completed closer to the events that precipitated Jones' absence since the issue here is her fitness to return to work following treatment. The Commissioner further notes, as did the ALJ, that Dr. Hewitt's final report did not deem Jones entirely incapacitated, but rather found her to be fully capable of teaching students below 5<sup>th</sup> grade.

<sup>3</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.

