

IN THE MATTER OF THE TENURE :
HEARING OF GINA PRIANO-KEYSER, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF : DECISION
THE BOROUGH OF THE CHATHAMS, :
MORRIS COUNTY. :

SYNOPSIS

The petitioning Board certified tenure charges of conduct unbecoming against respondent – a tenured speech and dramatic arts teacher, who was employed with the district for 10 years – in connection with a solitary incident that took place on April 17, 2009 in which petitioner allegedly allowed the demonstration of an inherently dangerous activity during a student presentation, which resulted in an injury, and failed to follow school procedures in dealing with the injured student.

The ALJ found that: the factual circumstances surrounding the April 17, 2009 event are not in serious dispute; petitioner was under the impression that the student presentation entitled “How to Fall Asleep” would focus on relaxation techniques and/or meditation, and her unrebutted testimony – that she stopped the presentation immediately after realizing that it was demonstrating how to pass out by hyperventilating – was credible; and the Board’s charge that petitioner should have known better than to send an injured student to the nurse accompanied only by another student is an exaggerated and unproven allegation; however, the petitioner did leave her class unattended, during which time a student was injured. The ALJ concluded that the two charges involving leaving students unattended were substantiated, and this failure of supervision led to a minor injury of a student under petitioner’s charge; accordingly, the ALJ recommended a penalty of forfeiture of three month’s pay.

Upon independent review of the record, the Commissioner concurred with the ALJ’s findings and adopted the Initial Decision of the OAL as the final decision in this matter. The Commissioner ordered that respondent shall forfeit 90 of the 120 days salary withheld following certification of tenure charges, and directed the District to return respondent to her tenured employment forthwith.

<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. Exceptions of the District and respondent’s reply thereto – submitted in accordance with the directives of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

The District initially excepts to the Administrative Law Judge’s (ALJ) dismissal of Charges 1 and 4 as unsubstantiated. With respect to Charge 1, it contends the ALJ’s finding that “Ms. Priano-Keyser’s credible testimony that she was surprised by the content of the demonstration was convincing” (Initial Decision at 5) is alarming. The District claims that respondent testified that she believed the demonstration was going to be about relaxation and breathing exercises for relaxation. Curiously, it argues, if this were the case why would the presentation be entitled “How to Fall Asleep.” Moreover, the District urges that the ALJ’s

finding as to respondent's "surprise" fails to consider why a student would attempt to mislead his teacher in this way. Urging that the ALJ erred in dismissing this charge, the District maintains:

Ms. Priano-Keyser admitted that the student injured himself immediately after the demonstration of "How to Fall Asleep" and Ms. Priano-Keyser admitted that the student injured himself immediately after she left the classroom unattended. The Board sustained its burden of proof in this regard because Ms. Priano-Keyser admitted the causal connection between the "How to Fall Asleep" demonstration and her leaving her classroom unattended thereby caused injury to a student in her class. (*Ibid.*)

As to Charge 4, the District contends the ALJ dismissed this charge because he found that at the time of this incident, the seriousness of head injuries had not been properly emphasized in the school nurse's presentation to staff. Such a conclusion, it avers, was based on his finding that "[a]lthough I believe her [the school nurse's] presentation probably did incorporate mention of head injuries, the absence of further instruction in the Power Point presentation leads me to believe that it was not a medical situation of emphasis." (Initial Decision at 6) The District contends that the ALJ's excusing respondent from complying with the school nurse's instructions merely because head injuries were not specifically included in her Power Point presentation serves to undermine the high expectations school districts are entitled to have of their teachers. The District argues that there was no testimony by respondent denying that the nurse had instructed her in how to deal with student head injuries and it, therefore, urges that dismissal of this charge be reversed. (District's Exceptions at 3-4)

The District next excepts to the ALJ's finding that charges 2 and 3 are exaggerated. In so finding, it charges, the ALJ stated:

The only attempt by the Board to establish an aggravating circumstance was the fact that the class was left unattended following a lesson that was considered inappropriate and dangerous. Undoubtedly, the lesson if countenanced by Ms. Priano-Keyser would have been inappropriate and dangerous, but it was

uncontradicted that upon learning of the content of the presentation she stopped it and warned the students of its dangers. (Initial Decision at 6)

The District finds “shocking” the ALJ’s apparent rationale that respondent’s condemnation of the presentation on how to pass out mitigates her unbecoming conduct in leaving her classroom. Rather, it urges, because seventh graders are capable of acting irresponsibly and carelessly, respondent “had an obligation not only to admonish her students as to the danger of hyperventilating, but also to oversee and guard against the predictable outcomes of the students hearing such a lesson.” Abandoning her classroom after her students were exposed to such a dangerous activity is unjustifiable. (District’s Exceptions at 4)

Finally – reiterating its post-hearing brief reliance on *Jenkins v. Anderson*, 191 N.J. 285 (2007) and *In the Matter of the Tenure Hearing of George Zofchak, Board of Education of the City of Trenton*, decided by the Commissioner October 15, 2002 (#365-02), *aff’d* State Board June 4, 2003 – the District urges the Commissioner to terminate respondent from her position.

In response, as to Charge 1, respondent advances that the ALJ correctly determined that the District had failed to prove that she allowed the demonstration of an inherently dangerous procedure. Respondent points out that no witness testifying at the hearing contradicted her testimony in this regard. Additionally, the handwritten notes of assistant principal Gordella’s investigative meeting with respondent verify her version of the events. (Respondent’s Reply Exceptions at 3-4). As to Charge 4, notwithstanding that the nurse testified that she trained staff on the proper protocol to be utilized for student head injuries, respondent testified that she did not recall any discussion or training whatsoever regarding protocol for head injuries; the nurse’s power point presentation did not cover head injuries; and no witness

presented at the hearing testified that the nurse provided any training in this regard. Consequently, the ALJ properly determined that the District did not meet its burden of proof on this charge. (*Id.* At 4-5)

As to Charges 2 and 3, respondent maintains that the ALJ properly found these to be exaggerated. Charge 2 alleges that respondent left her students unattended subsequent to a demonstration on passing out and that she should have expected the students would engage in the activity. Respondent does not deny that she left her classroom for a very short period of time. However, she specifically directed her students not to attempt the activity they had witnessed and prior to leaving the room all of the students were seated quietly. It is incomprehensible, respondent argues, that she could have reasonably foreseen that a student would attempt the activity after her admonition to the class not to do so. As to the District's charge that the student was injured because she left the room, respondent observes that a student could have attempted the activity even if she had been in the room. As such, the District cannot credibly allege that her actions in leaving the room were the cause of the student's injury. (Respondent's Reply Exceptions at 6-7)

In conclusion, respondent proposes that the District has proven nothing more than respondent left her classroom unattended for approximately 30 seconds while retrieving material from the copy machine. Given her unblemished ten-year record in the District, respondent maintains no good cause for termination has been demonstrated. Rather, she agrees that the ALJ properly concluded that a 90-day forfeiture of salary is an appropriate penalty under the circumstances here. (*Id.* At 7-9)

Upon full consideration of the record in this matter – which it is noted did not include transcripts of the hearing conducted at the OAL on December 16, 2009 – the

Commissioner concurs with the ALJ – for the reasons presented on pages 5-6 of his decision – that Charges 1 and 4 against respondent are appropriately dismissed as unfounded. The Commissioner further agrees with the ALJ that even though the details surrounding Charges 2 and 3 may be exaggerated, leaving a class unattended for any period of time is unbecoming conduct for a teaching staff member, and warrants discipline. In reaching these conclusions, the Commissioner was well aware of the clear and unequivocal standard governing his review of the factual findings of the ALJ based on credibility determinations:

The agency head 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)*).

Upon a reasoned review of the record with this governing standard in mind, viewing the District's exceptions as purely speculative in nature, and particularly in light of the absence of a hearing transcript in this matter, the Commissioner accepts the ALJ's factual findings and resultant conclusions, as they are amply supported by the record before him.

As to the penalty in this matter, the Commissioner is persuaded – as was the ALJ – that *Jerkins v. Anderson* and *Zofchak, supra*, are inapposite to the situation existing in this matter. (See Initial Decision at 7) The instant respondent is a 10-year employee of the District with a heretofore unblemished record. The charges here arose out of an isolated incident which took place on April 17, 2009 – where the Board has established that respondent failed to supervise her students for a period of time of less than one minute. Under these circumstances, the Commissioner is compelled to agree with the ALJ that forfeiture of three months pay is a

penalty sufficient to impress upon respondent that her supervisory obligations towards her students cannot be treated cavalierly.

Accordingly, the recommended decision of the OAL is adopted for the reasons expressed therein. Respondent shall forfeit 90 of the 120 days salary withheld following certification of the within tenure charges. The District shall forthwith return respondent to her tenured employment.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: April 30, 2010

Date of Mailing: May 3, 2010

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*)