

IN THE MATTER OF THE TENURE HEARING :  
OF CHRISTINE GILLESPIE, : COMMISSIONER OF EDUCATION  
STATE-OPERATED SCHOOL DISTRICT : DECISION ON REMAND  
OF THE CITY OF NEWARK, :  
ESSEX COUNTY. :

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### SYNOPSIS

This case dates back to 2003, when the petitioning Board filed tenure charges of incapacity and excessive absenteeism against respondent, a tenured teacher, and sought to terminate her employment with the district. The matter was transmitted to the Office of Administrative Law, but the tenure hearing was delayed for several years due to the pendency of a related workers' compensation case. The case was restored to the active list in January 2011. Thereafter, respondent failed to appear at a hearing scheduled for June 10, 2011. Respondent subsequently submitted a written explanation of her failure to appear, and the Commissioner found that the facts surrounding her absence did not warrant summary decision by default. The case was remanded to the OAL in August 2011 for fact finding and legal recommendations, with a directive from the Commissioner that respondent provide the OAL and petitioner with specific contact information for communicating with Ms. Gillespie, and that: "...respondent will not be excused if she fails to reply to notices, pleadings and communications sent to the phone numbers and addresses that she provides." The matter was eventually put on the inactive list pending resolution of the workers' compensation case, and reactivated in May 2015. Subsequently, OAL sent a notice to the parties that the remand hearing was scheduled for November 4, 2015. Respondent once again failed to appear, and also failed to offer any explanation of her non-appearance; shortly thereafter, OAL sent a Failure to Appear notice to the Commissioner, indicating that the case was being returned to the transmitting agency for appropriate disposition. The Commissioner remanded the matter back to the OAL for an *ex parte* hearing and Initial Decision on the merits of the tenure charges.

On remand, an *ex parte* hearing was held on March 1, 2016; Ms. Gillespie again failed to appear. The ALJ subsequently issued an Initial Decision, finding, *inter alia*, that there is ample proof in the record that respondent's absences were excessive, and she has, in fact, been out of work since September 1998; whether her absences were in whole or in part the result of actual medical problems, the undisputed facts show that respondent has been unavailable to teach for well over 15 years. The ALJ concluded that respondent is guilty of excessive absenteeism, absence without leave and unbecoming conduct, and the evidence in the record provides just cause for the termination of her employment. Accordingly, the ALJ dismissed respondent from her tenured position as a teacher in Newark schools.

The Commissioner concurred with the findings and conclusion of the ALJ, and adopted the Initial Decision as the final decision in this matter. Accordingly, the respondent was dismissed from her tenured position, and the matter was transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

<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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June 9, 2016

OAL DKT. NO. EDU 20524-15  
(EDU 9195-11 ON REMAND)  
AGENCY DKT NO. 67-2/03

IN THE MATTER OF THE TENURE HEARING :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.<sup>1</sup> This case involves tenure charges brought by the Board against the respondent, Christine Gillespie, a tenured teacher in the State-Operated School District of the City of Newark.<sup>2</sup> The tenure charges filed against the respondent allege excessive absenteeism, absence without leave/abandonment of her position, and/or incapacity pursuant to *N.J.S.A. 18A:6-11 et seq.* and *N.J.S.A. 18A:7A-39 et seq.*<sup>3</sup> The Administrative Law Judge (ALJ) found that the respondent was guilty of excessive absenteeism, absence without leave and unbecoming conduct, and recommended that the respondent be removed from her tenured position.

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<sup>1</sup> The Initial Decision was mailed to the parties on April 27, 2016; accordingly, exceptions were due on May 10, 2016. Without requesting permission to file late exceptions, on May 11, 2016, the respondent submitted untimely exceptions. The proposed exceptions were not considered herein because they were untimely filed. It should also be noted that the respondent did not appear at the March 1, 2016 hearing conducted at the OAL.

<sup>2</sup> The protracted and tumultuous history of this matter was fully explained in the Initial Decision and will not be repeated here.

<sup>3</sup> The tenure charges in this case were filed well before the enactment of the Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, *P.L.2012, c.26 (C.18A:6-117 et al.)*.

Upon a comprehensive review of the record in this matter, the Commissioner is in accord with the ALJ's determination that the Board has established that respondent is guilty of excessive absenteeism, absence without leave and unbecoming conduct. The Commissioner also fully concurs with the ALJ's fact-finding analysis and conclusions as to the truth of the Board's allegations, and finds the characterization of respondent's behavior to be fully supported by the record and consistent with applicable law. It has been found that excessive absenteeism can constitute "incapacity," "unbecoming conduct," and/or "other just cause" and thus can warrant dismissal. *See, State-Operated School District of Jersey City, Hudson County v. Vincent Pellecchio*, 92 N.J.A.R.2d (EDU) 267. Further, a tenured teaching staff member can be dismissed for excessive absenteeism even if the absenteeism occurs for legitimate reasons, such as long-term poor health. *Id.* at 270. The details and the history of respondent's excessive absenteeism and unbecoming conduct are extensively outlined in the Initial Decision and need not be repeated here. However, the extent of the respondent's excessive absenteeism is quite evident based on the fact that the respondent has been absent from the District without any medical support or authorization since October of 2001.

Turning to the appropriate penalty in this matter, the Commissioner recognizes that the factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher'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 re Hearing of Kittell, Little Silver School District*, 1972 S.L.D. 535, 541; *In re Fulcomer*, 93 N.J. Super. 404, 422 (App. Div. 1967). Again, in light of the respondent's absence from the District since 2001, the Commissioner finds that the respondent is unfit to discharge the duties and functions of her

position as a teacher. Additionally, in the absence of any mitigating factors in the record on which to dispute the determinations of the ALJ, the Commissioner agrees that the conduct proven in this proceeding amply warrants respondent's dismissal from her tenured employment.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from her tenured position with the State-Operated School District of the City 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>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: June 9, 2016

Date of Mailing: June 10, 2016

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<sup>4</sup> Commissioner decisions 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) and applicable court rules.