

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

In the Matter of:

**THE TENURE HEARING OF
LENORE FRANCIS,
JERSEY CITY BOARD OF EDUCATION,
HUDSON COUNTY, NEW JERSEY**

Agency Docket #285-9/12

Walt De Treux, Esq., Arbitrator

Hearing Date: 11/28/12

Decision Date: 1/10/13

Appearances: For the Petitioner Board of Education – Lester E. Taylor, Esq.
For Respondent Francis – Philip Feintuch, Esq.

Introduction and Statement of Relevant Facts

Lenore Francis has worked for 14 years as a Special Education Teacher at PS 23, Mahatma Gandhi Elementary School, for the Jersey City Public Schools.

Teachers receive 13 sick leave days per year, which they can accumulate, and 2 personal business days per year. During her time at PS 23, Francis was often absent for periods in excess of her paid leave time¹. In the 2002-03 school year, Francis missed 18.625 days. In 2003-04, she was absent 25.4168 days; and in 2004-05, she missed 25.5 days. She was absent 33.5 days in 2005-06 and 40.66 days in 2006-07. In 2007-08, Francis was absent 36.4167 days; and in 2008-09, she missed 19.7917 days. In 2009-10, she missed 31.95 days. In 2010-11, she was absent 104 days, 78 of which were without pay and 30 of which were taken as FMLA leave. From the start of the 2011-12 school year until November 2, 2011, Francis was absent 22 days out of approximately 30 school days.

¹ Totals include a small number of late arrivals.

Based on Francis' attendance record, PS 23 Principal Ana Ortiz-Rivas expressed concerns about the effect on student achievement and the lack of continuity of instruction. On November 2, 2011, the Principal requested a hearing to address "Ms. Francis excessive absenteeism with the recommendation that tenure charges be initiated."

Around December 30, 2011, Francis requested FMLA leave for the period of January 1 through February 1, 2012. The request was denied because Francis had not worked the required number of hours in the previous 12 months. Despite demands from the District to return to work, Francis remained absent for the remainder of the 2011-12 school year.

On August 9, 2012, the Jersey City Board of Education served tenure charges on Francis alleging incapacity, conduct unbecoming a Board of Education employee, and neglect of duty based on chronic and excessive absenteeism. On September 20, 2012, the Board of Education determined to certify tenure charges against Francis and voted to suspend her without pay, effective September 21, 2012. The tenure charges were filed with the New Jersey State Department of Education that same day. On October 10, 2012, Francis, through her counsel, denied the charges and requested that they be dismissed.

On October 18, 2012, the Department of Education reviewed the charges and deemed them sufficient, if true, to warrant dismissal. The charges were referred to the undersigned pursuant to *N.J.S.A. 18A:6-16*, as amended by *P.L. 2012, c.26*. On November 28, 2012, a hearing was held at the Jersey City Public Schools office, during which both parties had a full and fair opportunity to present documentary

and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. At the close of the hearing, the matter was submitted to the Arbitrator for a decision.

Issue

Are the tenure charges filed by the Jersey City Board of Education against Lenore Francis sufficient to warrant dismissal?

Analysis and Decision

The District's attendance records document Francis' high absenteeism rate. Francis does not challenge the records; she does, however, assert that she had valid reasons for her absences. During the 2003-04 school year, she served as primary caregiver for her father, who underwent quadruple bypass surgery. In 2005-06, she had surgery; and in 2010-11, she was involved in a car accident. From 2006 through 2011, she was involved in an abusive domestic relationship, which caused her to miss work. In 2011-12, she was involved in another car accident and also suffered a miscarriage followed by post-partum depression.

While the School District does not dispute the reasons for her absences, it notes that with the exception of her April 1-May 19, 2011 approved leave, she only requested Leaves of Absence after Principal Ortiz-Rivas recommended the initiation of tenure charges in November 2011.

The issue is not whether Francis experienced personal injuries and events that forced her to miss work. The issue is whether the District must continue to

employ a teacher who misses significant amounts of work throughout the school year.

From the 2003-04 school year through the 2009-10 school year, Francis missed an approximate average of 30 school days per year. In 2010-11 and 2011-12, she was absent approximately 270 days combined. As Principal Ortiz-Rivas testified, the high absenteeism pattern resulted in a lack of continuity of instruction for the students, affected collaboration between the teachers, impacted short and long-term educational planning, and impeded the determination of student progress.

Francis notes that she worked in the same classroom with an Elementary Education teacher and another Special Education teacher filled in for her in her absence. She testified that she remained available as a resource for the substitute and parents.

Francis downplays the importance of her presence in the classroom. Though the District may have had a qualified substitute, her excessive absenteeism represented a change in personnel in the classroom. Such change potentially affects, as Principal Ortiz-Rivas noted, collaboration between the teachers and impedes planning. It clearly impacts the continuity of instruction.

The District brought three charges against Francis, alleging incapacity, conduct unbecoming a Board of Education employee, and neglect of duty. The charges of conduct unbecoming and neglect of duty imply some fault or disregard on Francis' part. The evidence does not reveal any disregard or intentional avoidance of her work responsibilities. To the contrary, Francis' absences are attributable to a

series of unfortunate events, including her father's illnesses, her own illnesses and injuries, and her domestic situation. For these reasons, I find that the District has failed to prove conduct unbecoming or neglect of duty.

The District has offered sufficient evidence to demonstrate incapacity. Francis' high absenteeism rate simply renders her unreliable and unable to adequately meet the responsibilities of her position. Although her absences may have been for legitimate reasons, the excessive rate of absenteeism negatively impacts her effectiveness to the District and in the classroom. In an average year, Francis was absent approximately 30 school days per year, well in excess of the paid sick and personal leave time allotted to teachers. In the last two years, she missed a combined 270 days, the vast majority of both school years. Francis' repeated and consistent pattern of excessive absenteeism effectively diminishes her value as a teacher to the District, her fellow teachers, and the students. The District's charge of incapacity is appropriate.

For these reasons, I find that the District's tenure charge related to incapacity is sufficient to warrant dismissal.

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Award

The District has produced sufficient evidence to support its charge of incapacity against Respondent Lenore Francis. The tenure charge is sufficient to warrant dismissal.



WALT De TREUX

Date of Decision: January 10, 2013

 1/10/13

JOANN K. WILLIAMS