

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION
Agency Docket No.: 68-3/24

In the Matter of the TENURE Hearing between

**The BOARD OF EDUCATION OF THE CITY OF CAMDEN,
CAMDEN COUNTY, NEW JERSEY**

PETITIONER

and

SHERWONDA RIOS,

RESPONDENT

BEFORE: **Ira Cure, Esq.**
 Arbitrator

APPEARANCES

For the Petitioner School District:
Louis Lessig, Esq.
Brown & Connery, LLP

For the Respondent:
No Appearance

OPINION and AWARD

Pursuant to *N.J.S.A., 18A:6-16*, as amended by *P.L. 2012, c. 26* and *P.L. 2015, c. 109* ("TEACHNJ"), the tenure charges alleging incapacity and other just cause brought by the Petitioner Board of Education of the City of Camden ("District" or "Petitioner") against Sherwonda Rios ("Rios" or "Respondent") were referred to me for a hearing and decision. The charges were filed by the District with the New Jersey Department of Education ("DOE") on or about December 20, 2023. An answer was filed by the

Respondent with the DOE on or about April 30, 2024. On May 1, 2023, Jennifer Simons, the DOE's Director of the Office of Controversies and Disputes, appointed me to hear this dispute. A hearing was originally scheduled to take place on June 28, 2024. Upon representation by counsel for the Respondent, I was told that the matter was close to being settled. The June 28th hearing was adjourned without date. When it became clear that no settlement would be forthcoming, I scheduled a new hearing date for September 19, 2024. At the request of the parties that hearing was also adjourned to September 27, 2024. I conducted a hearing at the offices of the District's attorneys Brown & Connery, LLP 360 Haddon Avenue, Westmont, New Jersey on September 27, 2024. Despite due notice, there was no appearance by the Respondent.

The District was represented by Louis Lessig, Esq. of the firm of Brown & Connery. Theresa Reese ("Reese"), the District's Chief Talent Officer, was the sole witness for the Petitioner. As noted, there was no appearance by the Respondent or her counsel. The District submitted a brief on October 25, 2024, and the record was closed at that time.

RELEVANT STATUTORY PROVISION

N.J.S.A. 18A:6-10. Dismissal and reduction in compensation of persons under tenure in public school system

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public-school system of the state, or

(b) if he is or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other

educational institution conducted under the supervision of the commissioner;

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this sub-article, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

THE CHARGE

TENURE CHARGES AGAINST SHERWONDA RIOS

I, Katrina M. McCombs, M. Ed., State Superintendent of the Camden City School District ("the District") do hereby charge that Sherwonda Rios ("Rios"), a tenured teacher, should be permanently dismissed from employment for incapacity and/or other just cause.

Charge One: Incapacity

1. Rios has been employed with the District since September 1, 2006, and is tenured. See CCSD SR001.
2. Beginning in December, 2021, Rios began to use extended leaves of absence related to a series of medical conditions.
3. On December 14, 2021, Rios tested positive for Covid-19, requiring a leave of absence beginning on December 14, 2021 until December 23, 2021. See CCSD SR002-005.

4. The December 14, 2021 to December 23, 2021 leave of absence was supported by a Certification of Health Care Provider Form signed by Dr. Emily Clausen, M.D. Id.

5. On January 3, 2022, Rios was hospitalized for a medical condition involving the use of her eyes, and started a subsequent leave of absence from work as a result of her medical condition. See CCSD SR006-008.

6. Rios was seen at the Wills Eye Hospital by Dr. Mark Moster, M.D., a Neuro-Ophthalmologist at Wills Eye Hospital, who observed Rios has "severe bilateral vision field constriction and blurred vision," and recommended that Rios "remain out of work until vision has improved." Id.

7. By way of Certification of Health Care Provider by Dr. Mark Moster dated January 27, 2022, Dr. Moster anticipated paid FMLA leave from January 3, 2022 to March 1, 2022. Id.

8. Additionally, by way of Certification of Health Care Provider by Dr. George D. Nghiem, DO dated February 22, 2022, Dr. Nghiem noted Rios was suffering from partial loss of vision and back pain as well as diabetes and cystic fibrosis, and anticipated a leave of absence from January 1, 2022 to March 31, 2022. See CCSD SR009.

9. Further, additional FMLA leave dates were approved from March 23, 2022 to June 30, 2022.

10. In total for the 2021-2022 School Year, Rios worked 56 out of a total 184 days and utilized 86.5 days of unpaid leave of absence.

11. On August 19, 2022, Rios provided another Certification of Health Care Provider Form to the District authorized by Dr. Mark Moster. The Certification explained

Rios could not perform “any job function that requires peripheral vision” and that Rios has “peripheral vision loss, nasally and inferiority, in both eyes.” Dr. Moster also indicated that Rios required continuous absence from work. See CCSD SR010.

12. The Accepted Leave of Absence indicated on the Certification of Health Care provided an anticipated leave of absence to begin on September 1, 2022 to an end date of September 1, 2023. Id.

13. During the 2022-2023 School Year, Rios was not in work for a single day, but was primarily on an Unpaid Leave of Absence. See CCSD SR011-014.

14. In the past two school years, Rios worked a total of 56 days out of a possible 369 days.

15. On October 5, 2022, Human Resources Manager Janiell Tomlinson conducted an ADA call with Rios exploring possible accommodations. In the conversation, Rios expressed she was attending occupational therapy for her condition, but that she “doubts that she can return to a classroom” due to the loss of her peripheral vision, as well as difficulties with uncontrollable headaches, driving, and blurry vision. Rios had suggested a possible return to the District in an office position. See CCSD SR015.

16. On January 10, 2023, Human Resources Manager Janiell Tomlinson conducted a follow up call with Rios exploring possible accommodations. In this conversation, Rios concluded that she is not able to return to the classroom in any capacity, and explained that she is unable to see anything below her nose. Rios explained that her eye doctors were willing to consider office work options with accommodations, and that her doctors had given her special goggles for her vision. Rios reiterated that she continues with therapy, but will not be able to return to a classroom. See Id.

17. Additionally, the District had been in contact via email with Rios beginning in February 2023. In these conversations, Rios indicated she had given the Willis Eye Center a “return to work” form that would eventually be completed, signed, and returned to the District. Rios was instructed to have the Doctor write out accommodation notes because the District did not have its own “return to work” form. See CCSD SR016-019.

18. Rios provided a document to the District dated April 17, 2023 and signed by Dr. Mark Moster indicating the various medical conditions Rios has, including “occasional blurred vision, constricted field of vision, both eyes.” Dr. Moster wrote that these impairments affect Rios by causing “fatigue from reading for extensive periods, tunnel vision” and “visual processing delays/ ‘brain fog’.” Dr. Moster stated these limitations affect Rios’ ability to work by limiting her mobility, causing difficulty “observing each child,” and “maintaining classroom environment.” See CCSD SR020.

19. Further, the job description for Rios’ position as a Pre-K teacher requires, as part of the major roles and responsibilities, a teacher to “consistently implementing and enforcing rules and consequences in the classroom setting and school-wide,” (sic) as well as “effectively and innovatively incorporating technological resources into classroom lessons.” Additionally, a candidate for Pre-K teacher is expected to demonstrate “[e]xceptional classroom management skills.” See CCSD SR021-024.

20. Based on the documentation the District currently has in its possession, the continued absence of Rios, the unlikelihood of Rios’ ability to function in a classroom setting, and the representation by Rios that she cannot return to a classroom, Rios is no longer capable of serving as a Pre-Kindergarten teacher.

21. Rios is no longer capable of continuing in a teaching position with the District due to her medical and health condition.

22. Therefore, pursuant to N.J.S.A. 18A:6-10, due to Rios' incapacity, the District seeks to terminate Rios' employment with the District as a teacher.

Charge Two: Other Just Cause

23. The above-described incapacity constitutes other just cause warranting Rios' permanent dismissal from employment with the District as a teacher.

24. Rios' continued absence from work has placed on (sic) strain on the District's resources in finding coverage for her classroom.

25. Rios' continued absence has also caused the District the inability to accurately evaluate her performance in the classroom, with her most recent evaluation occurring during the 2020-2021 School Year. See CCSD SR025-030.

26. Accordingly, Rios' incapacity constitutes other just cause warranting Rios' permanent dismissal from employment with the District as a teacher.

FACTS

Ms. Rios is a tenured Pre-Kindergarten teacher. Commencing in December 2021, Ms. Rios experienced a series of medical difficulties, including severe COVID which required a leave of absence. In addition, on January 3, 2022 Ms. Rios was hospitalized for a medical condition which concerned her eyesight. Her condition was subsequently identified as "severe bilateral vision field constriction and blurred vision." This condition also required a leave of absence. In addition, Ms. Rios suffered from back pain as well as diabetes and cystic fibrosis. Ms. Rios was given leave pursuant to the Family Medical

Leave Act ("FMLA") for the period January 1, 2022 to March 31, 2022. Additional FMLA leave was granted for the period March 23, 2022 to June 30, 2022. During the 2021-2022 School Year, Ms. Rios took eighty-six and one half (86.5) days of unpaid leave.

On August 19, 2022, Ms. Rios provided a certification from a health care provider which stated that: Ms. Rios could not perform "any job function that requires peripheral vision" and that Ms. Rios suffered peripheral vision loss in both eyes. Ms. Rios accepted another leave of absence for the period September 1, 2022 to September 1, 2023. Ms. Rios did not work a single day during the 2022-2023 school year. District personnel contacted Ms. Rios to determine if there was any accommodation that she could receive which would permit Ms. Rios to return to service. Ms. Rios herself stated that she "doubted" that she could return to a classroom.

In addition, the District explored having Ms. Rios return to work in an office capacity. There is no evidence that any non-teaching or office position existed that could be offered to Ms. Rios and no evidence that one was offered to Ms. Rios, or that Ms. Rios was capable of performing office duties if such a position became available.

On April 17, 2023 Dr. Mark Mosher ("Mosher") submitted a document stating that Ms. Rios continued to have "occasional blurred and a constricted field of vision" in both eyes. Dr. Mosher stated that Ms. Rios' impairment caused "fatigue from reading for extensive periods, tunnel vision, visual processing delays/brain fog." Dr. Mosher also stated that these limitations limited Ms. Rios' mobility and would cause difficulty observing students and maintaining an adequate classroom environment.

The District concluded that Ms. Rios would not be able to meet the job requirements of a Pre-Kindergarten teacher and, based on Ms. Rios' continued absence

the District determined that Ms. Rios was no longer capable of serving in a teaching position. The District asserts that due to her medical and health conditions, Ms. Rios is incapacitated and as such the District seeks to terminate Ms. Rios's employment with the District. The District also asserts that Ms. Rios's continued absences placed a continuing strain on District resources, and that the District is unable to evaluate Ms. Rios' performance. Therefore, the District contends that there is just cause for the termination of Ms. Rios.

DISCUSSION

The burden in this case is on the District to prove by a preponderance of the evidence that the statutory criteria for the Tenure Charges have been met. The record evidence reveals that the District has met this burden. The documentary evidence and the testimony of Ms. Reese establish that the Respondent has not been able to fulfill her duties as a tenured Pre-Kindergarten teacher for 56 of the 184 teaching days during the 2021-2022 school and that the Respondent was not able to teach at all during the 2022-2023 school year. Where the District has met its burden, the burden then shifts to the Respondent to affirmatively prove that she has a defense to the Tenure charges brought against her. The Respondent has not appeared in this proceeding and has offered no explanations or defenses to the charges brought against her.

I find that the District has proven Charge One: Incapacity. The District has also proven Charge Two: Other Just Cause. The District has demonstrated through the testimony of Ms. Reese that the Respondent's excessive absence from the classroom placed a strain on the District's resources by requiring the District to find coverage for the

Respondent's duties.¹ The Respondent failed to rebut any of the evidence against her.

Based on the above, I render the following:

AWARD

The undersigned Arbitrator having been designated pursuant to *N.J.S.A., 18A:6-17.1(c)*, and *AAA Labor Rule no. 27* hereby issues, and AWARDS as follows:

1. For the reasons set forth in this Decision and Award, the Arbitrator finds the District met its burden of proving that the Respondent Sherwonda Rios was incapable of performing her duties and the District had other just cause for terminating the Respondent. Therefore, the charges of "Incapacity" and "Other Just Cause" are sustained, and the dismissal of the Respondent Sherwonda Rios is upheld.

Dated: November 11, 2024


Ira Cure

State Of New York)
County of Kings)

On this 11th day of November before me personally came and appeared Ira Cure, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged that he executed the same.


Notary Public

ELIZABETH ORFAN
Notary Public, State of New York
No. 02OR4976601
Qualified in Kings County
Commission Expires April 23, 2027

¹ It is also follows that the Respondent's inability to perform her duties precluded the District from evaluating the Respondent's performance.