

IN THE MATTER OF THE TENURE :
HEARING OF TAFT REED, STATE- :
OPERATED SCHOOL DISTRICT OF : COMMISSIONER OF EDUCATION
THE CITY OF NEWARK, ESSEX : DECISION
COUNTY. :
_____ :

SYNOPSIS

District filed tenure charges of unbecoming conduct against physical education teacher due to his arrest by State Police for illegal drug possession. In May 1997, respondent entered a guilty plea in Superior Court to one count of theft by deception, a crime in the third degree, which resulted in a forfeiture pursuant to *N.J.S.A. 2C:51-2(a)(1)*, prior to the adjudication of the tenure charges. Remaining at issue, however, was respondent's claim for back pay and emoluments for the period beginning with the date of his suspension, October 29, 1996, to the date of respondent's voluntary resignation on December 1, 1996.

Respondent having failed to appear at hearing and having failed to keep in touch with his attorney, the ALJ granted summary judgment to the District, accepting the allegations set forth as uncontroverted and concluding that the District demonstrated a *prima facie* case of illegal drug and paraphernalia possession which constituted unbecoming behavior for a tenured teacher. ALJ ordered respondent dismissed from his position, effective October 29, 1996, the date of certification of charges.

Commissioner concurred with the ALJ that the uncontroverted allegations contained in the pleadings advanced by the District with respect to respondent's arrest by the State Police and subsequent charge of illegal drug and paraphernalia possession constituted unbecoming conduct and mandated his termination from his tenured position. Commissioner found that respondent could not claim entitlement to back pay and emoluments for the period of his suspension pursuant to *N.J.S.A. 18A:6-8.3*. Commissioner noted that had respondent not forfeited his tenured position in May 1997, his termination as a result of this decision would be effective as of the date of this decision, not the date of certification of charges as stated by the ALJ.

AUGUST 20, 1997

OAL DKT. NO. EDU 11677-96
AGENCY DKT. NO. 520-11/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon his independent review of the within record, the Commissioner concurs with the Administrative Law Judge (ALJ) that the uncontroverted allegations contained in the pleadings advanced by the District with respect to respondent's arrest by the State Police and subsequent charge of illegal drug and paraphernalia possession constitutes unbecoming conduct for a teacher, and mandates his termination from his tenured position. As such, respondent can claim no entitlement to back pay and emoluments for the period of his suspension pursuant to *N.J.S.A. 18A:6-8.3*.¹ The Commissioner observes, however, that, contrary to the finding of the ALJ herein, respondent's termination from his position as a consequence of this determination would be effective as of the date of this decision, rather than the date the District certified tenure charges against him.²

¹ It is noted that the sole period of time at issue herein is that from October 29, 1996, when the District certified charges against respondent and suspended him without pay, to December 1, 1996, when respondent voluntarily resigned from his position.

² In that respondent forfeited his employment, pursuant to *N.J.S.A. 2C:51-2(a)(1)*, on May 14, 1997, removal from his position at this point in time is a moot issue.

Accordingly, the initial decision granting summary decision to the District, as modified herein, is adopted as the final decision in this matter.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 20, 1997