

IN THE MATTER OF THE TENURE :
HEARING OF ROBERT BENJAMIN, : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF SOUTH BRUNSWICK, :
MIDDLESEX COUNTY. :
_____:

SYNOPSIS

Board certified tenure charges of unbecoming conduct and other just cause against respondent custodian for failure of a random drug test administered after he returned to work from a leave of absence for in-patient drug rehabilitation.

Having considered the record and the testimony of witnesses, the ALJ concluded that the collection and testing procedures used for respondent's test were more than consistent with reasonable medical office and laboratory practice. Citing *Caravello*, the ALJ noted that strict adherence to federal drug testing regulations is not required to validate drug tests which are not regulated by the federal government. ALJ concluded that the positive cocaine metabolite result on respondent's urine sample was valid. Thus, in light of his earlier agreement with the Board when he was granted a leave of absence to enter rehabilitation, the positive test for cocaine established the Board's tenure charges of unbecoming conduct and other just cause, warranting respondent's dismissal from his tenured position as custodian. ALJ ordered dismissal.

Upon review of the record, which included transcripts of the two days of hearing at OAL, the Commissioner concurred with the findings and determination of the ALJ and adopted them as his own. Commissioner ordered respondent dismissed from his tenured position as a custodian as of the date of this decision.

SEPTEMBER 19, 1997

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and the Board’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.¹

Upon a careful and independent review of the record in this matter, which included transcripts from the two days of hearing at the OAL,² the Commissioner finds no cause to disturb the Administrative Law Judge’s (ALJ) findings or conclusions. In this regard, he is not persuaded by petitioner’s renewed contention that, “in essence,” and by application of agency principles, the Board has adopted federal drug testing requirements and procedures as its own because the Board’s physician testified that the drug testing he performed for the Board was pursuant to federal regulations. (Respondent’s Exceptions at pp. 1, 2) Rather, as the ALJ aptly noted in citing *Carevello, supra*,

¹ Both the exceptions and the reply thereto reiterate arguments which were presented to the ALJ, and were fully and fairly considered by her, as well.

Respondent does not cite any authority which imposes federal workplace drug testing standards on the test performed on his urine. Moreover, while Dayton Family Practice, to a certain extent, and [Smith Kline Beechum], to a greater extent, did follow federal guidelines, some deviation from those guidelines does not invalidate the test.*** (Initial Decision at p. 19)

The Commissioner further concurs that the Board has established that respondent is guilty of unbecoming conduct and other just cause, warranting his dismissal from his tenured position as a custodian, particularly in view of his earlier agreement with the Board upon his leave of absence to enter drug rehabilitation. In this regard, the Commissioner recognizes that

***Protection of the public is particularly vital in the school environment, where a custodian has ready access to impressionable young children who are not under the watchful eye of their parents. New Jersey has an expressed public policy of ridding the schools of the scourge of illegal drug use. The Legislature has recognized the special nature of the school setting by enacting stiffer penalties for drug offenses committed within the vicinity of school property. Such laws are intended “not only to protect school children by shielding them from direct drug sales,” but also to immunize students from the indirect effects of drug dealings ***. (Citation omitted) *Larry Hall v. New Jersey State Department of Education*, 91 N.J.A.R. 2d (EDU) 46, 47.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. Respondent is hereby dismissed from his tenured position as a custodian as of the date of this decision.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 19, 1997

² October 7, 1996 and October 8, 1996.