

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

SYNOPSIS

District initially certified tenure charges of unbecoming conduct and chronic and excess tardiness against respondent teaching staff member. Following respondent's contention that the unbecoming conduct charge should have been inefficiency, the District withdrew its charge of unbecoming conduct and filed charges of inefficiency. Respondent filed a motion to dismiss the charge of inefficiency for failure to comply with procedural requirements, which motion was granted. Remaining issues were whether the charge of chronic and excessive tardiness were to be sustained and, if so, whether the circumstances warranted respondent's records. Respondent acknowledged her tardiness as reflected in the District's records.

In light of testimony of witnesses and the record, the ALJ concluded that the charge of chronic and excessive tardiness had a negative impact on her students and, therefore, had to be sustained. However, in that respondent had shown improvement with respect to tardiness in recent years, the ALJ determined that respondent was to be restored to her teaching position but, in view of the large number of late arrivals, as well as the surrounding circumstances, a forfeiture of pay was the appropriate penalty. Thus, the ALJ ordered a penalty of forfeiture of pay for a period of 120 days.

Upon review of the record, including a transcript of the hearing, the Commissioner concurred with the ALJ's determination that the District had carried its burden of proving respondent's tardiness and that the appropriate penalty was forfeiture of the 120 days' salary already withheld.

OAL DKT. NOS. EDU 3290-97 AND 5447-98
AGENCY DKT. NOS. 36-1/97 AND 117-4/98

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record in this matter, which included a transcript of the hearing conducted at the OAL on June 2, 1999, the Commissioner finds, like the Administrative Law Judge (ALJ), that the District has carried its burden of proving that respondent's tardiness was excessive and was, indeed, disruptive to its operations and educational program. Under these circumstances, however, where respondent has not been "docked" for lateness in the past two years and has, apparently, remedied her tardiness problem, the Commissioner concurs that the appropriate penalty is for respondent to forfeit the 120 days' salary already withheld.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

FEBRUARY 16, 1999

* This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.