



F

State of New Jersey

DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

RICHARD J. CODEY
Acting Governor

LUCILLE E. DAVY
Acting Commissioner

September 30, 2005

[Redacted]

Dear [Redacted]:

I am in receipt of your letter to Director of Controversies and Disputes M. Kathleen Duncan, wherein you take issue with the manner in which tenure charges were brought against you by the Newark State-Operated School District and contend that the State Board of Education rules governing filing and certification of tenure charges against employees of State-operated school districts are contrary to statute.

To the extent that the arguments made in your letter relate to the tenure matter currently pending before the Commissioner as *In the Matter of the Tenure Hearing of [Redacted], State-Operated School District of the City of Newark Essex County*, Agency Dkt. No. 67-2/03, OAL Dkt. No. EDU 3399-03, as you have been previously advised by this agency, the Commissioner is strictly proscribed from considering information or argument outside the formal record of case proceedings. Therefore, neither the Commissioner nor the staff who assist her in such matters may review your submission, and, for that reason, Director Duncan has forwarded your letter to me and asked that I return it to you on her behalf.

To the extent that you are attempting to challenge the facial validity of State Board rules, please be aware that such challenges must be pursued in the Appellate Division of the Superior Court, in accordance with New Jersey Court Rules, R. 2:2-3(a)(2). Therefore, no action will be taken in response to the sentence on page 6 of your letter that might be construed as a request for emergent relief in this regard pursuant to *N.J.A.C. 6:3-1.6*.

As we indicated when you previously contacted this agency about your tenure matter, you may rest assured that the Commissioner will conduct a full and fair review of the record and render a decision consistent with applicable law. We further remind you that, if there are issues you would like the Commissioner to consider in reviewing your case, you may wish to share them with your attorney, or raise them before the ALJ directly if you are now representing yourself, so that they may be brought to the record as appropriate through mechanisms established for that purpose in statute and rule.

Sincerely,

Richard Rosenberg
Richard Rosenberg
Deputy Commissioner

Enclosure

- c: Dr. Arnold Hyndman, President, State Board of Education
- Gordon MacInnes, Assistant Commissioner
- M. Kathleen Duncan, Director, Bureau of Controversies and Disputes
- Anthony Marino, County Superintendent
- Dr. Marion Bolden, State District Superintendent
- Joseph Del Grosso, President, NTU
- ✓ Perry Lattiboudere, Esq.
- Cherie Maxwell, Esq.
- Eugene Liss, Esq.

www.nj.gov/education

7-2011-8-1-1111-00

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* ADMITTED IN NY ONLY ** ADMITTED IN NY & CT ONLY
* ADMITTED IN OR ONLY ** ADMITTED IN CA ONLY
* ADMITTED IN CA & DC ONLY
PLEASE REPLY TO NEWARK

February 25, 2003

VIA CERTIFIED MAIL/RRR

William L. Librera, Commissioner of Education
New Jersey Department of Education
Riverview Executive Plaza, Building 100
Route 29
P.O. Box 500
Trenton, New Jersey 08625-0500

Re: *In Re Tenure Charges* [REDACTED]
State-Operated School District of the City of Newark

Dear Dr. Librera:

This office represents the State-Operated School District of the City of Newark in regard to the above-referenced matter.

Enclosed herewith for filing are the original and three (3) copies of the Statement of Tenure Charges, Statement of Evidence, Appendix of Exhibits and supporting documentation and Certificate of Determination. Also enclosed is the Certification of Ruth M. Ruggero, Esq., and a Certificate of Service of the within upon [REDACTED] as well as her last known representative.

RECEIVED
OFFICE OF GENERAL COUNSEL
03 FEB 28 AM 10:28

SILLS CUMMIS RADIN TISCHMAN EPSTEIN & GROSS

William L. Librera, Commissioner of Education
February 25, 2003
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Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



CHERIE L. ADAMS

Enclosures

cc: Perry Lattiboudere, Esq.



The Newark Public Schools
Office of the General Counsel
2 Cedar Street
Newark, New Jersey 07102-3091
Phone: 973-733-7139
Fax: 973-733-7054



Marion A. Bolden
State District Superintendent

William L. Librera
Commissioner of Education

Perry L. Lattiboudere, Esq.
General Counsel

Arsen Zartarian, Esq.
Joseph Verga, Esq.
Raphael Felli, Esq.
Associate Counsel

December 30, 2002



Dear [REDACTED]:

You are herewith advised that charges of Excessive Absenteeism, Absence Without Leave/Abandonment of Position, and/or Incapacity have been filed against you. Enclosed please find one (1) copy of each of the following: 1) Statement of Charges; 2) Sworn Statement of Evidence; and 3) Appendix of Exhibits.

You are further advised that pursuant to N.J.S.A. 18A:6-11, you are granted the opportunity to submit a written statement of position and a written statement of evidence under oath in response to the Charges. You shall have fifteen (15) days from the date of receipt of this letter to submit your written position and documentation in support thereof.

Further, please be advised that at the expiration of that time, pursuant to statute, the Board shall consider the charges and the statement of evidence that you have submitted, and make a determination as to whether there is probable cause to credit the evidence in support of the charges and whether, if such charges are credited, they are sufficient to warrant dismissal. In the event of a determination of probable cause, the Board will certify the matter to the Commissioner of Education for hearing, pursuant to N.J.S.A. 18A:6-16.

You will be notified in writing of any determination made.

Very truly yours,

PERRY L. LATIBOUDERE.
General Counsel

STATEMENT OF CHARGES

I, Ann Marie McGoldrick, do herewith charge that [REDACTED], employed by the State-Operated School District of the City of Newark as a tenured Teacher is guilty of Excessive Absenteeism, is Absent Without Leave/Abandonment of Position, and/or is Incapacitated so as to require that her employment with the State-Operated School District of the City of Newark be terminated. More particularly, it is charged that:

CHARGE NO. 1 - EXCESSIVE ABSENTEEISM

[REDACTED] is not reported to work since September 4, 1998. These absences have adversely impacted the educational program of the students in her care. This excessive absenteeism and its deleterious impact on the students constitutes sufficient cause to support [REDACTED]'s dismissal.

[REDACTED]'s attendance has been a repeated problem in that she has been consistently absent and has not returned to work since September 1998. She has not provided any authorization for her absences and has been considered AWOL since October 23, 2001. (Exhibit "1"). [REDACTED] attended only three (3) days during the 1998-99 school year and has never returned to work from September 4, 1998 to the present.

[REDACTED]'s time records show that she has been excessively absent from work. The education of the children has been adversely impacted due to [REDACTED]'s failure to report and/or perform teaching duties due to her absences. This resulted in interruption of the educational program and interfered with the District's responsibility to ensure that the students were properly instructed.

On October 5, 1998, [REDACTED]'s Principal, William Demetroulakos, sent a letter to [REDACTED]

[REDACTED] explaining that her presence for only three (3) days during the opening month of September

"created havoc" among the first grade students she was assigned to teach. (Exhibit "2"). In the letter he asked [REDACTED] to advise him when she plans on returning to school. At the time of the letter, [REDACTED] had not provided proper medical certification and was considered AWOL. (Exhibit "3").

A letter was submitted by the parents of Branch Brook School's first grade class attesting to the adverse impact created by not having their first grade teacher, [REDACTED], present more than three (3) days in the first month of school in 1998 (Exhibit "4"). There was no representation as to when she would be able to return either. The letter was signed by thirty (30) parents. Since that time, [REDACTED] has not returned to work.

The District displayed a great deal of patience with [REDACTED] and afforded her several opportunities to improve her attendance. However, her absenteeism has substantially impacted the continuity of the educational program of the students in [REDACTED]'s care.

CHARGE NO. 2 -ABSENCE WITHOUT LEAVE/ABANDONMENT OF POSITION

State-Operated School District of the City of Newark repeats and makes a part hereof, as if set forth fully at length herein, each and every allegation set forth in the charge above. [REDACTED] has been absent without leave since at least October 23, 2001. In 1998, [REDACTED] was assigned to Branch Brook School to teach students in the first grade. She has not reported to work since September 4, 1998. [REDACTED] has failed to provide the District with appropriate documentation showing a legitimate reason for her absences since October 23, 2001 and has failed to appear for work. Therefore, [REDACTED] is absent without leave and her dismissal is required.

The Workers' Compensation Orders entered in this matter enclosed herein as Exhibit "5." The order of September 22, 2000 finds the District was responsible for temporary disability due to a worker's compensation claim pending a further evaluation which occurred in November 2000. Since November 2000, [REDACTED]'s absences had to be approved by the District's Health Services Department. The Medical Certificates since that time are enclosed herein as Exhibit "6-10 and 12-14."

As evidenced in the medical certificates, following November 2000, [REDACTED]'s medical condition(s) that prevent(s) her from reporting to work have been largely unknown and varying. On November 3, 2000, [REDACTED]'s absence due to pharyngitis was approved from October 24, 2000 through November 6, 2000. (Exhibit "6"). On November 16, 2000, [REDACTED] was further absent until November 27, 2000. (Exhibit "7"). On December 21, 2000, the medical certificate shows that [REDACTED] was absent from November 27, 2000 through December 3, 2000 for a depression disorder. (Exhibit "8"). From December 31, 2000 through February 28, 2001, she remained out for depression and anxiety. (Exhibit "9").

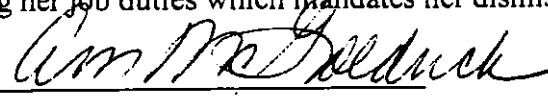
As of February 28, 2001, no further authorization was provided until September 2001. Exhibit "10." Although she eventually did respond to the status of her varying medical conditions, it was not before the District sent [REDACTED] correspondence that she had not returned to work and was considered AWOL. (Exhibit "11").

On September 24, 2001, the medical certificate was disapproved from September 4, 2001 through October 15, 2001 for lack of an independent medical evaluation. (Exhibit "12"). Then, on October 9, 2001, [REDACTED]'s absences from September 24, 2001 through October 6, 2001 she were approved for "otitis externa." (Exhibit "13"). Then, from October 9, 2001 through October

23, 2001 she was out for a sinus infection.(Exhibit "14"). No further documentation has been provided since that time. On January 11, 2002, the District advised [REDACTED] that she was considered AWOL. (Exhibit "15"). No documentation has been provided to justify the continued absences. Accordingly, [REDACTED] has been absent without leave and has either actually or "de facto" abandoned her position. The education of the children has been adversely impacted due to [REDACTED]'s absence without leave which interfered with the continuity of the District's educational program.

CHARGE NO. 3 - INCAPACITY

State-Operated School District of the City of Newark repeats and makes a part hereof, as if set forth fully at length herein, each and every allegation set forth in the charges above. Even assuming, *arguendo*, that [REDACTED]'s absences are medically justified, she remains incapable of performing the essential functions required for her position in that she has failed to function as a teacher since September 4, 1998. [REDACTED]'s unwillingness or inability to return to work has deprived students of instructional time and adversely impacted the functioning of the school in that young school children had no stability in her classroom. By being consistently absent, [REDACTED] has shown she is incapable of performing her job duties which mandates her dismissal.

By: 
Ann Marie McGoldrick
State District Assistant Superintendent
Human Resources Services
State-Operated School
District of the City of Newark

Sworn and subscribed to before me
on this 30 day of December , 2002.



STATEMENT OF EVIDENCE

Documentary evidence in support of the Charges that [REDACTED] has been guilty of Excessive Absenteeism, of Absence Without Leave/Abandonment of Position, and/or is Incapacitated as a Teacher is to be found in the time records and other documents prepared by employees of the State-Operated School District of the City of Newark. These materials are contained in the Appendix of Exhibits attached hereto.



Ann Marie McGoldrick
State District Assistant Superintendent
Human Resources Services
State-Operated School
District of the City of Newark

Sworn and subscribed to before me
on this 30 day of December, 2002.



APPENDIX OF EXHIBITS

1. Attendance Records
2. Letter to [REDACTED] from William Demetroulakas dated October 5, 1998 regarding her failure to appear for work or provide medical certification and the detrimental impact of her absences on her students.
3. Letter to [REDACTED] from Donald Johnson dated October 12, 1999.
4. Letter dated September 30, 1998 to Ms. Silva from parents of first grade class expressing concern for their children due to [REDACTED]'s attendance.
5. Workers' Compensation Orders dated August 11, 1999, March 8, 2000, September 13, 2000, and September 22, 2000.
6. Medical Certificate authorization form dated November 3, 2000.
7. Medical Certificate authorization form dated November 16, 2000.
8. Medical Certificate authorization form dated December 21, 2000.
9. Medical Certificate authorization form dated January 9, 2001.
10. Medical Certificate authorization form dated March 8, 2001.
11. Letter to [REDACTED] from District dated May 11, 2001 advising her of her AWOL status.
12. Medical Certificate authorization form dated September 24, 2001.
13. Medical Certificate authorization form dated October 9, 2001.
14. Medical Certificate authorization form dated October 19, 2001.
15. Letter to [REDACTED] from Yolanda Pena dated January 11, 2002 advising her of her AWOL status.

In the Matter of the Tenure Hearing
of [REDACTED]

STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF NEWARK

CERTIFICATE OF DETERMINATION

Marion Bolden, of full age, does hereby certify and say:

1. I am the State District Superintendent of the State Operated School District of the City of Newark, New Jersey, and am fully familiar with the facts set forth in this certification.

2. I submit this Certificate of Determination in support of the enclosed tenure charges against [REDACTED], a tenured teacher employed in the School District.

3. On December 30, 2002, tenure charges of Excessive Absenteeism, Absence Without Leave/Abandonment of Position and/or Incapacity as a Teacher, as well as supporting documents, were filed against [REDACTED] by Ann Marie McGoldrick, Interim Executive Director of Human Resources. These charges were filed with the undersigned pursuant to N.J.S.A. 18A:6-11 et. seq. and N.J.S.A. 18A:7A-39 et. seq.

4. A copy of the within charges and supporting evidence was served via Federal Express on [REDACTED] on December 30, 2002. [REDACTED] signed for said mail on December 31, 2002.

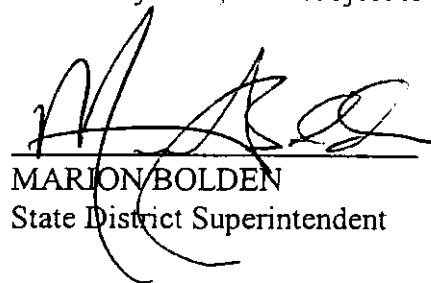
5. On January 7, January 15, and January 16, 2003, responses to the charges were forwarded by [REDACTED].

6. On this date, pursuant to N.J.S.A., 18A:6-11 and N.J.S.A. 18A:7A-39, I have considered the charges and supporting evidence alleged of Excessive Absenteeism, Absence Without Leave/Abandonment of Position and/or Incapacity as a Teacher, and have considered [REDACTED]'s responses to said charges. I have determined that there is probable cause to credit the evidence in support of the charges of Excessive Absenteeism, Absence Without Leave/Abandonment of Position and/or Incapacity as a Teacher. I have further determined the charges, and the evidence in support of the charges, are sufficient, if true in fact, to warrant the dismissal or the reduction of salary of [REDACTED] pursuant to N.J.S.A 18A:6-11.

7. As she is currently absent without leave and without pay, [REDACTED] has not been suspended in connection with the Certification of these charges.

I hereby certify and say that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

DATED: February 19, 2003


MARION BOLDEN
State District Superintendent



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER OF INACTIVITY

OAL DKT. NO. EDU 3399-03

AGENCY DKT. NO. 67-2/03

**IN THE MATTER OF THE TENURE
HEARING OF [REDACTED]
STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF NEWARK, ESSEX
COUNTY**

BEFORE JEFFREY A. GERSON, ALJ:

This matter was transmitted to the Office of Administrative Law on April 2, 2003 for a hearing pursuant to *N.J.S.A. 14B-1 et seq.* The matter was scheduled for hearing on several occasions but adjourned because the petitioner requested that the matter be continued on the Inactive list pending the disposition of a pending Worker's Compensation case.

There is no objection by Counsel for the Respondent to this matter being continued on the inactive list.

Therefore, good cause having been shown, it is on this 29 day of July 2004, with consent of counsel, **ORDERED** that this matter be continued on the inactive list for a period of six months; and upon expiration of said six months, the Office of Administrative Law shall review the status of this matter and schedule it for hearing or take other action consistent with the foregoing.

OAL DKT. NO.: EDU 3399-03


This order may be reviewed by the **COMMISSION OF THE DEPARTMENT OF EDUCATION** upon interlocutory review pursuant to *N.J.A.C. 11-14.10*.

7/29/04

Date

sej

cc: William Speziale, Deputy Clerk


JEFFREY A. GERSON, ALJ