

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

DEPARTMENT OF EDUCATION,)
)
 Complainant) PSPC DOCKET NO. DI-91-08¹⁰
)
 v.)
)
 VASANTI D. NAGAR,)
)
 Respondent)

PROPOSED REPORT
WITHOUT A HEARING

This matter is before the hearing officer pursuant to 22 Pa. Code §233.13 (e)(1)(iii)(c)(iv) providing that if a professional educator timely responds in writing to the notice of charges but waives the right to an evidentiary hearing by failing to expressly request a hearing, a hearing officer shall be appointed by the Professional Standards and Practices Commission who will accept as true the allegations of fact contained in the Notice of Charges and who will prepare a proposed report without a hearing.

I. PROCEDURAL HISTORY

1. Vasanti D. Nagar (hereinafter "Respondent") was issued a permanent teaching certificate endorsed in the areas of biology and

chemistry in October of 1984 by the Commonwealth of Pennsylvania, Department of Education, (hereinafter "Complainant").

2. On June 25, 1991, the Complainant's Bureau of Teacher Preparation and Certification ("Bureau") received a Mandatory Report of Certificated Employee Terminated for Cause notice from the Pittsburgh School District ("District"), which stated that Respondent was dismissed from the District due to incompetency based upon two unsatisfactory ratings of Respondent, dated January 8, 1990 and January 8, 1991. The dismissal of Respondent by the District followed a hearing held on February 26, 1991.

3. By letter dated June 28, 1991, the Bureau asked the District's Board of Directors ("Board") to provide the transcripts, opinions, decisions, recommendation concerning discipline, reports of findings, summary of evidence, action taken, and information dealing with appeals from the Board's decision.

4. On July 15, 1991, the Bureau received, by letter dated July 11, 1991, from the Board the requested documents.

5. On June 23, 1991, and July 15, 1991, the Bureau provided the Complainant with the Board's findings, summary of evidence, action taken, recommendations concerning discipline of Respondent and a transcript of the February 26, 1991 hearing.

6. On July 30, 1991, the Complainant filed with the Professional Standards and Practices Commission ("Commission") a Notice of Charges, pursuant to section 13(a) of the Teacher Certification Law, as amended, 24 P.S. §12-1263(a), seeking the

suspension or revocation of Respondent's certificate on the basis of incompetency. The Notice of Charges was mailed to Respondent and the Board on July 30, 1991.

7. On September 16, 1991, the Commission received from the Respondent a "Response to Notice of Charges," wherein Respondent alleged that she was not dismissed by the District due to incompetency but, rather, because of discrimination based on her national origin. In this letter Respondent expressly requested a hearing, and indicated her desire to have her non-lawyer son, Mr. Shawn Nagar, represent her.

8. On September 19, 1991, the Complainant filed with the Commission its Motion for Judgment on Default, pursuant to section 5(a)(11) of the Teacher Certification Law, as amended, 24 P.S. §12-1255 (a)(11), 35 Pa. Code §35.37 and 22 Pa. Code §233.13 (e)(1)(iii) requesting that the Commission enter an order deeming the respondent in default and thereby revoking her certification. The Complainant contended that Respondent failed to timely respond to the Complainant's Notice of Charges and request a hearing within the 30 day requirement under section 13 (a) of the Teacher Certification Law, as amended, 24 P.S. §12-1263(a), which response was due to be filed on or before Thursday, September 12, 1991. Respondent's letter in response to charges, dated September 13, 1991, was received by the Office of Chief Counsel on September 16, 1991.

9. By letter dated September 19, 1991, the Commission required the Respondent to respond to the Motion for Judgment on Default by September 29, 1991, or be deemed in default and all averments of the Notice of Charges deemed admitted. Respondent responded by letter, dated September 24, 1991.

10. By Order dated October 24, 1991, the Complainant's Motion of Judgment on Default was denied and the Commission was directed to appoint a hearing officer to conduct such hearings as might be necessary pursuant to the Act. The Order further denied Respondent's request to be permitted lay representation by her son under 1 Pa. Code §31.23(2).

11. A hearing officer was appointed, by letter dated December 6, 1991.

12. By letter dated February 19, 1992, the hearing officer confirmed a pre-hearing telephone conference with counsel for Complainant and Respondent for February 24, 1992, setting a hearing date of Monday, March 16, 1992. During the pre-hearing telephone conference Respondent waived her right to participate in a hearing.

13. By letter dated February 28, 1992, Respondent expressly waived her right to participate in a hearing stating that although she could not afford a lawyer, she declined to follow the hearing officer's suggestion that she obtain legal aid from the local legal services because she thought that her son could do a better job.

14. By letter dated May 18, 1992, the hearing officer informed both parties that a decision would be rendered without a hearing and that the allegations of fact contained in the Notice of Charges would be accepted as true pursuant to 22 Pa. Code §233.13 (e)(1)(iii)(C)(iv). The Parties were further informed of their right to present legal argument and were directed to file simultaneously any legal arguments in brief form on or before June 10, 1992.

15. The Complainant's brief was filed with the Commission and mailed to the Respondent on June 10, 1992.

16. The hearing officer received no brief from Respondent by the June 10, 1992 deadline, however Respondent requested in her February 28, 1992 letter to the hearing officer that two letters, dated September 13, and September 24, 1991, addressed to Warren Evans, Executive Director of the Commission, be considered and used as her response to the charges against her in this matter.

II. FINDINGS OF FACT

The following findings of fact represent the factual allegations provided in Complainant's Notice of Charges, dated July 30, 1991, and are accepted as true by the hearing officer for purposes of rendering this Proposed Report as provided by 22 Pa. Code §233.13 (e)(1)(iii)(C)(iv).

1. Respondent was rated unsatisfactory for the 1989-1990 school year.

2. Respondent's unsatisfactory rating for the 1989-1990 school year stemmed from her inability to manage or control her classroom.

3. The Principal and the Science Supervisor observed Respondent's classroom teaching and met with Respondent on approximately 16 occasions during the 1989-1990 fall semester in an effort to help Respondent become a satisfactory teacher.

4. During the ~~1989~~¹⁹⁸⁹-1990 school year, Respondent demonstrated an inability to adjust her teaching techniques to the appropriate level of the student's understanding or to elicit the active participation of the students in the classroom.

5. Due to Respondent's lack of classroom control, her students were unable to or were prevented from learning in her classroom.

6. Respondent was rated unsatisfactory for the 1990-1991 school year.

7. Respondent's unsatisfactory rating for the 1990-1991 school year was due to her inability to manage her classroom.

8. During the 1990-1991 fall semester, the Principal made classroom observations on three occasions and held four independent conferences with Respondent in an effort to improve her teaching techniques.

9. During the 1990-1991 fall semester, the Science Supervisor observed Respondent's classroom on two occasions and held two conferences with Respondent and the Principal.

10. On numerous occasions during the 1990-1991 fall semester, it was necessary for the Principal or another teacher to intervene to correct the disruptive behavior of Respondent's students, which included fighting, hollering and screaming in the hall and use of the telephone in Respondent's classroom.

11. The atmosphere maintained by Respondent in her classroom was not conducive to instruction during the 1990-1991 fall semester.

12. Respondent was provided with recommendations, strategies, modeling and readings to help improve her classroom management but no improvement was evidenced throughout the 1990-1991 fall semester.

III. CONCLUSIONS OF LAW WITH DISCUSSION

1. Complainant has proven, based upon the facts presented in the Notice of Charges, that Respondent's classroom behavior and conduct constituted such incompetency as to justify either suspension or revocation of her teaching certificate or any other authorized discipline. Horosko v. School District of Mount Pleasant Township, 355 Pa. 369, 6 A.2d 866 (1939).

The Pennsylvania Supreme Court held in Horosko, supra, that the term "incompetency" when used for purposes of terminating a

school teacher's employment contract "... may be employed as meaning disqualification; inability; incapacity; lack of ability, legal qualifications, or fitness to discharge the required duty... want of physical, intellectual or moral ability; insufficiency; inadequacy; specif., want of legal qualifications or fitness".

Id. at 869-70.¹ The Pennsylvania Commonwealth Court has further found adequate basis for termination of a teacher's employment on grounds of incompetency where a teacher failed to maintain adequate classroom control or discipline, allowing students to engage in undirected, random activity. Kudasik v. Port Allegheny Sch. Dist., 455 A.2d 261 (Pa. Commw. 1983); See also Hamburg v. North Penn. Scho. Dist., 484 A.2d 867 (Pa. Commw. 1984) (A teacher's deficiency in personality, composure, judgment and attitude that detrimentally effects his effectiveness may warrant a finding of incompetency.)

Complainant has provided in the Notice of Charges that during the 1990-1991 fall semester, Respondent's students were, on numerous occasions, corrected by the principal and another teacher for disruptive behavior which included fighting, hollering and screaming in the hall and the unauthorized use of the classroom telephone. Respondent failed to maintain adequate classroom control or to discipline her students.

¹ The Commission's #4 Draft of proposed new Chapter 237, Title 22, Pa. Code defines "incompetency" as ". . . failure, through personality, judgment, inability, incapacity, unfitness or other cause, to perform the services required of a professional educator." Id.

Although Respondent's failure to maintain adequate classroom control is serious enough in itself to have warranted a finding of incompetency, English v. North East Board of Education, 22 Pa. Commw. 240, 348 A.2d 494 (1975), Complainant has also based its finding of incompetency upon claims that Respondent also failed to utilize effective teaching techniques during classroom instruction. See Steffen v. South Middletown Township Sch. Dist., 377 A. 2d 1381 (Pa. Commw. 1977) (Teacher who lacked ability to motivate and properly instruct students found incompetent.) Complainant, in its brief, relies upon testimony presented before the District that Respondent failed to plan lessons effectively; to select teaching objectives at the correct level of difficulty; or check for student understanding while the class was in progress. Complainant's Brief at p. 4-5. Complainant has further provided in the Notice of Charges, as factual basis for its claim of Respondent's incompetency, that during the 1989-1990 school year Respondent was unable to "adjust her teaching techniques to elicit student understanding or active participation in the classroom." See (Tr. p. 80; Admin. Ex. 1).

In Kudasik, supra, the court found that a finding of incompetency is warranted where the teacher fails to utilize classroom time efficiently, apply proper instructional techniques, and to organize the curriculum. A teacher's use of methods of instruction that result in a lack of motivation or participation on the part of students and in an increase of unauthorized conduct by

students is a sufficient basis for a finding of incompetency. Bruckner v. Lancaster County Area Vo-Tech Joint School Operating Committee, No. 4-80 (1980), aff'd, 70 Pa. Commw. 522, 453 A.2d 384 (1982).

Complainant has substantially proven that Respondent's classroom behavior and conduct constituted a finding of incompetency so as to warrant the appropriate discipline against Respondent.

2. Respondent has failed to meet her prima facie burden of establishing that she was discriminated against by the District and its employees due to her national origin or race during the 1989-1991 school years. McDonnell Douglas Corp. v. Green, 411 U.S. 792.802 (1973); Pittsburgh Bd. of Education v. Pennsylvania Human Relations Commission, 563 A.2d 581 (Pa. Commw. 1989).

Respondent has alleged that her treatment by the District and its employees during the 1989-1991 school years was discriminatory due to her national alienage and thus constituted unwarranted harassment. Observations of Respondent's classroom by District supervisors and employees were given to Respondent on a frequent and constant basis as a part of the District's "Focused Teacher Program". During the Fall 1989-1990 semester alone, Respondent was visited on approximately 16 occasions by her principal and science supervisor. (Tr. pp. 77-86, 92-99; Admin, Ex.1).

The determination of whether this or any other such conduct by the District constituted harassment on a discriminatory basis can

not be considered by the hearing officer due to Respondent's failure to meet the required burden of proof. See Pittsburgh Bd. of Education, supra Unfortunately, Respondent's continual insistence that she be represented solely by her non-lawyer son, and not by legal counsel, undoubtedly worked to her detriment in proving a prima facie case of discrimination against the District.

The law is clear that the complainant bears the burden of establishing a prima facie case of discrimination by showing that "... 1. he was a member of a protected class, 2. he was qualified to perform his job duties, 3. he was terminated from his position, and 4. persons not of his protected class but otherwise comparable were not discharged." Pennsylvania State Police v. Pennsylvania Human Relations Comm'n, 542 A.2d 595, 600 (Pa. Commw. 1988). See also McDonnell, supra Respondent has not met this burden.

3. Two consecutive unsatisfactory ratings of Respondent during the 1989-1990 and 1990-1991 school years based upon findings of incompetency constitutes a proper basis in which to revoke Respondent's teaching certificate. 22 Pa. Code §351.26(a); See also Thall Appeal, infra; Cf. Kushner v. Board of Education, School Dist. of Philadelphia, No. 15-83 (1984), rev'd, 109 Pa. Commw. 120, 530 A.2d 541 (1987). Complainant may recommend appropriate discipline against Respondent which may consist of public or private reprimand, suspension or revocation of Respondent's teaching certificate. 24 P.S. §12-1225(a)(11); 24 P.S. §12-1251(6).

The Secretary of Education's regulations provide that two

consecutive unsatisfactory ratings are necessary before a determination of incompetency can be the basis for discharge. 22 Pa. Code sec. 351.26 (a); See also Thall Appeal, 410 Pa. 222, 189 A.2d 249 (1963). Respondent received two consecutive unsatisfactory ratings for the 1989-1990 and 1990-1991 school years due to a determination of incompetency. As such, Respondent is properly subject to the appropriate disciplinary action prescribed herein.

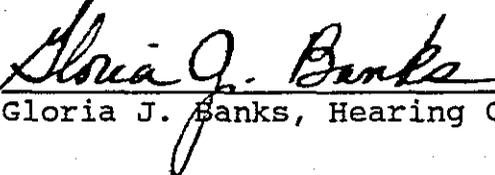
Complainant's Notice of Charges recommends that Respondent's teaching certificate be suspended until such time as she demonstrates, after adequate continuing professional study, her ability to properly manage and control the classroom environment. Complainant has now recommended, in its brief, that Respondent's certificate be revoked due to the parties' inability to finalize settlement terms regarding continuing educational options during the pre-hearing telephone conference with the hearing officer.

It is true that during the pre-hearing conference Respondent was unable to articulate her final decision on the settlement terms offered by Complainant. In light of Respondent's prior teaching experience, the hearing officer is not convinced that her failure to finalize settlement terms is a sufficient basis in which to permanently revoke Respondent's certificate without affording her the opportunity to improve her skills. Accordingly, the hearing officer shall grant Complainant's recommended discipline for Respondent as provided in part in the Notice of Charges.

Respondent's teaching certificate shall be suspended for a six month period from the date of this Order, or until such time Respondent demonstrates, to the satisfaction of the Commission, during the six month suspension period, that she has completed sufficient coursework, in-service, and/or other continuing professional study, which establishes her ability to manage and control a classroom of students. Upon such a showing, Respondent's certificate shall be fully reinstated. Should Respondent fail to present such a showing by the expiration of the six-month period, the Complainant's request for revocation of Respondent's certificate shall be granted.

PROPOSED ORDER

AND NOW, THIS 24th DAY OF JULY, 1992, COMPLAINANT'S REQUEST THAT RESPONDENT'S TEACHING CERTIFICATE BE SUSPENDED IS GRANTED IN PART. COMPLAINANT'S REQUEST THAT RESPONDENT'S TEACHING CERTIFICATE BE REVOKED IS GRANTED IN PART. IT IS HEREBY ORDERED THAT RESPONDENT'S TEACHING CERTIFICATE IS SUSPENDED FOR A SIX MONTH PERIOD FROM THE DATE OF THIS ORDER, OR UNTIL SUCH TIME AS RESPONDENT, WITHIN THE SIX MONTH SUSPENSION PERIOD, DEMONSTRATES, TO THE SATISFACTION OF THE COMMISSION, THAT SHE HAS COMPLETED SUFFICIENT COURSEWORK, IN-SERVICE, AND/OR OTHER CONTINUING PROFESSIONAL STUDY WHICH ESTABLISHES HER ABILITY TO MANAGE AND CONTROL A CLASSROOM OF STUDENTS. IT IS FURTHER ORDERED THAT RESPONDENT'S TEACHING CERTIFICATE SHALL BE REINSTATED UPON MEETING SUCH REQUIREMENTS. RESPONDENT'S FAILURE TO MEET SUCH REQUIREMENTS AT THE EXPIRATION OF THE PRESCRIBED PERIOD OF SUSPENSION, SHALL CAUSE HER TEACHING CERTIFICATE TO BE REVOKED AS REQUESTED BY COMPLAINANT.



Gloria J. Banks, Hearing Officer

DATE: July 24, 1992