

IN THE MATTER OF THE TENURE :  
HEARING OF GEORGE MAMUNES, :  
PASCACK VALLEY REGIONAL : COMMISSIONER OF EDUCATION  
HIGH SCHOOL DISTRICT, BERGEN : DECISION  
COUNTY. :

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SYNOPSIS

The Board certified tenure charges of unbecoming conduct against respondent tenured social studies teacher, based on accusations that he uttered racist, sexist and/or derogatory comments to students in his third-period classroom on seven occasions.

Based on the evidence presented at hearing, the ALJ concluded that the Board had established, by a preponderance of the relevant credible evidence, that the incidents serving as a basis for the tenure charges had occurred. However, the ALJ found that respondent's actions did not warrant termination in light of his prior lengthy and unblemished record of service, finding that, although he exercised poor judgment and was insensitive in his remarks to students, respondent did not intend his comments to be racist, sexist or demeaning to his students. Therefore, the ALJ recommended the penalty imposed be the forfeiture of 120 days of salary withheld following the certification of tenure charges, the forfeiture of two months' additional salary and that merit increments be withheld until the end of the 2000-2001 school year.

The Commissioner adopted the Initial Decision of the ALJ for the reasons expressed therein as the final decision in this matter. In so determining, the Commissioner noted that, although he is without authority to compel respondent to attend training classes designed to address and prevent insensitive conduct in the classroom, it would be appropriate for the Board to do so within the confines of respondent's tenure and contractual rights. (*In re DiPillo*)

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The record in this matter and the Initial Decision of the Office of Administrative Law have been reviewed.<sup>1</sup> The Board's exceptions and respondent's exceptions, as well as the replies thereto, were submitted in accordance with *N.J.A.C.* 1:1-18.4, and were duly considered by the Commissioner in reaching his determination herein.

The Board's exceptions contest the Administrative Law Judge's (ALJ) conclusion that the nature of the charges themselves and respondent's overall professional record do not warrant termination of employment. The Board argues, *inter alia*, that the ALJ erred in accessing the seriousness of respondents' statements to students, and that respondent's actions warrant the severest penalty of removal from his tenured teaching position.

In his exceptions, respondent asserts that Charge 3 should be dismissed because the ALJ made factual findings that respondent did not make stereotype or racial statements (Respondent's Exceptions at 1), that Charge 5 was not sustained by a preponderance of the credible evidence (*id.* at 14), and that Charges 2 and 6 do not rise to the level of unbecoming conduct (*id.* at 15, 16). Respondent contends that in reaching her determination, the ALJ relied

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<sup>1</sup> Although hearings were conducted on November 23, 24, 25, 1998 and December 1, 9, 15, 17, 18 and 30, 1998, the only transcripts provided to the Commissioner were those of the December 15 and December 17 hearings and a partial transcript of the hearing on December 9, all of which were provided by the Board.

on inadmissible opinions expressed by the school's administrators, who were not qualified as experts in the fields of psychology or human behavior. (*Id.* at 3) Additionally, respondent challenges the credibility findings in the Initial Decision, alleging that the ALJ was unconcerned with the inconsistencies in the students' testimony and written statements. Respondent avers that if the students' statements were consistent, the ALJ found that they were telling the truth, but if the students' statements were inconsistent, the ALJ found that it showed that they didn't fabricate testimony because their ability to recall things is different. (*Id.* at 9-10)

In its reply exceptions, the Board argues that Charges 2, 3, 5 and 6 should be sustained and urges the Commissioner to modify the ALJ's recommended penalty to provide for respondent's immediate dismissal from the District. (Board's Reply Exceptions at 30)

Respondent's reply exceptions urge the Commissioner to adopt the findings of the ALJ with a modification of the penalty since respondent never intended to disparage or embarrass anyone or to hurt their feelings. Respondent further requests that his long and honorable teaching career, as well as his record of promoting tolerance and civil rights as noted by the ALJ, be taken into consideration in determining penalty. (Respondent's Reply Exceptions at 11-12)

Having conducted a careful and independent review of the record in this matter, including the arguments advanced by the parties, the Commissioner finds no cause to disturb the credibility determinations and factual findings rendered by the ALJ. The Commissioner is satisfied, based upon the record before him, that the ALJ appropriately measured the plausibility of content in deciding the credibility of witnesses and the proper weight to assign to testimony in reaching her factual findings and conclusions.

Accordingly, the Commissioner concurs that the Board has sustained its burden of proving all seven charges of conduct unbecoming a teacher by a preponderance of credible evidence.

As to the appropriate penalty, the Commissioner finds it necessary to balance the totality of the record herein with the need to stress most emphatically on respondent the seriousness of his conduct and his need for greater control and sensitivity in dealing with his students. The Commissioner agrees with the ALJ that, in view of all the facts in this matter, the extreme penalty of loss of tenured employment is not warranted. However, the Commissioner also agrees that respondent's use of inappropriate language is a serious infraction deserving a harsh penalty. The Commissioner, therefore, concurs with the ALJ that the appropriate penalty is respondent's forfeiture of the 120 days of pay withheld following the certification of tenure charges, the forfeiture of an additional two months' salary, and the withholding of increments until the end of the 2000-2001 school year.<sup>2</sup> In so determining, the Commissioner also notes that, although he is without authority to compel respondent to attend training classes designed to address and prevent insensitive conduct in the classroom, it would be appropriate for the Board to do so within the confines of respondent's tenure and contractual rights. *See In the Matter of the Tenure Hearing of DiPillo, School District of the Township of Randolph, Morris County, 95 N.J.A.R.2d (EDU) 206, 208.*

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<sup>2</sup> It is noted that respondent has no entitlement to receive a salary amount that includes an award of an increment during his suspension following the Board's certification of tenure charges. *See In the Matter of the Tenure Hearing of Anthony Castaldo, School District of the Union County Regional High School No. 1*, decided by the State Board, 1986 S.L.D. 3026.

Accordingly, the Initial Decision in this matter is adopted for the reasons expressed therein.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: June 26, 2000

Date of Mailing: June 26, 2000

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<sup>3</sup> This decision, as the Commissioner's final determination, 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.