

IN THE MATTER OF THE TENURE :
HEARING OF BRENDA MAPP, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION
TRENTON, MERCER COUNTY.
_____ :

SYNOPSIS

The Board certified tenure charges of unbecoming conduct against respondent teacher based on criminal offenses, teacher performance infractions, and failure to follow proper procedures related to tardiness and absences. Respondent's increment was withheld for the 1999-2000 school year.

The ALJ found that respondent's conduct adversely affected the morale or efficiency of the District, violated standard of good behavior and destroys public respect for teachers. She admitted allowing drug dealers to use her residence for storing, selling and cooking cocaine and she herself received money and cocaine, which she sold. This conduct which resulted in Charges 1 and 2 was so egregious in and of itself as to justify her removal. The ALJ concluded that in the best interest of the students in the District, respondent should be removed as a teacher.

The Commissioner concurred with the findings and conclusions of the ALJ. The Commissioner stressed that ultimate disposition of the criminal matters was irrelevant; rather, the focus of the inquiry in this matter was solely concerned with respondent's fitness to teach. The Commissioner ordered respondent dismissed from her tenured teaching position as of the date of this decision and referred the matter to the State Board of Examiners for action as that body deems appropriate.

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| <p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
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August 5, 2003

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_____ :

The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Respondent’s exceptions and the Board’s reply thereto were filed in accordance with *N.J.A.C.* 1:1-18.4.

Respondent’s exceptions charge that the Initial Decision failed to properly consider and weigh the criminal justice system outcome of the criminal charges forming the basis of Charges 1 and 2 of the tenure charges herein. She points out that, after a full investigation and consideration of all surrounding circumstances, the Prosecutor’s Office dismissed the first charge and disposed of the second by downgrading it to a noncriminal disorderly persons offense. As such

[e]ither because the charges themselves, when fully considered, were not determined to be serious enough to warrant a full prosecution or because the respondent, herself, demonstrated a sufficient understanding of the issue and took the appropriate steps to curb her behavior, the conduct should not form a sufficient basis for unbecoming conduct.
(Respondent’s Exceptions at 1, 2)

Although respondent acknowledges that the justice system result does not “automatically” preclude a finding of unbecoming conduct, she argues that such an outcome provides “persuasive evidence” that such charges are insufficient to warrant termination from her position. (*Id.* At 1)

With respect to Charges 3 and 4, *i.e.*, alleged inattention to her classroom duties resulting in students being unsupervised; failure to comply with call-out procedures and repeated tardiness, respondent refers to page 26 of the Initial Decision where the Administrative Law Judge (ALJ) recognized that her testimony as to complications she experienced from medical surgery could provide a sufficient basis for the imposition of a penalty less than dismissal. Consequently, respondent argues, since Charges 3 and 4 are insufficient to require removal from her position, interests of justice and fair play dictate that “the addition to those charges of a single non-criminal offense should not tip the scales in favor of removal.” (*Id.* at 2)

In reply, the Board submits a copy of its post-hearing brief advanced below and urges that, for the reasons set forth in this brief and the Initial Decision, the Commissioner adopt the recommended decision terminating respondent’s tenured employment.

Upon careful and independent review of the record in this matter, which it is noted does not include transcripts of the hearing below, the Commissioner agrees with the findings and conclusions of the ALJ that respondent is guilty of conduct unbecoming a teaching staff member with respect to each of the four charges against her (Initial Decision at 23-24) warranting her removal from her tenured position with the Trenton Board of Education.

In so concluding, the Commissioner rejects as meritless respondent’s advancement that, as a result of the criminal court outcome of the charges underlying Counts 1 and 2 of the tenure charges here, the behavior involved should somehow be viewed as *de minimis*, therefore, incapable of rising to the level of unbecoming conduct. It is by now well-established that diversion or dismissal of criminal charges has no bearing on a finding of unbecoming conduct in a tenure matter as to the incident(s) underlying those charges or the imposition of an appropriate penalty. *In the Matter of the Tenure Hearing of Arlene Dusel*,

School District of the Borough of Sayreville, 1978 S.L.D. 526, supplemental decision 1979 S.L.D. 153, *aff'd* State Board of Education, 1979 S.L.D. 155; *In the Matter of the Tenure Hearing of Jeffrey Wolfe, School District of the Township of Randolph*, 1980 S.L.D. 721, *aff'd* State Board, 1980 S.L.D. 728, *aff'd* App. Div., 1981 S.L.D. 1537; *In the Matter of the Tenure Hearing of R. Scott McIntyre, Hunterdon-Voorhees Regional School District*, 96 N.J.A.R. 2d (EDU) 718, *aff'd* State Board, 96 N.J.A.R. 2d (EDU) 726, *aff'd* App. Div., 96 N.J.A.R. 2d (EDU) 726. Such holdings are reflective of a recognition of the fundamental differences in the purpose and scope of these adjudicating forums. First, the quantum of proof necessary to sustain criminal charges is significantly enhanced from that necessary in an administrative matter, *i.e.*, beyond a reasonable doubt as opposed to a preponderance of the credible evidence. More importantly, however, the interests implicated in a tenure proceeding are intrinsically different from those in a criminal matter. As found by the Commissioner in *Dusel, supra*:

The “interests” to be protected herein are not those associated with a possible indictment or conviction in a criminal matter, but those concerned with fitness to hold a position as an instructor of school pupils. The right of these pupils to be taught by teachers who are free from the taint of patently illegal or flagrantly unbecoming acts is also at issue. (at 531)

Simply put, the focus of the inquiry in this matter is solely concerned with respondent’s ability and fitness to teach public school children. Therefore, the analysis to be made is whether any of the charges herein, individually or collectively, amount to “unbecoming conduct.”

The Commissioner finds and concludes that it is uncontestable that respondent’s behavior and actions which formed the basis of Counts 1 and 2 of the tenure charges herein constitute conduct unbecoming a teaching staff member. He further concurs with the ALJ that the nature of the incidents is so egregious, in and of itself, as to justify respondent’s removal from her tenured position. The Commissioner recognizes that “teachers carry a heavy

responsibility by their actions and comments in setting examples for the pupils with whom they have contact.” *In the Matter of the Tenure Hearing of Blasko, School District of the Township of Cherry Hill*, 1980 *S.L.D.* 987 at 1003. As such, some actions are “so foreign to the expectations of the deeds and actions of a professionally certificated classroom teacher as to raise manifest doubts as to the continued performance of that person in the profession.” (*Ibid.*) Taken in conjunction with the unbecoming conduct evidenced in Charges 3 and 4, respondent’s unfitness as an educator is beyond question.

Accordingly, the Initial Decision of the ALJ is adopted for the reasons well expressed therein. Respondent is hereby dismissed from her tenured teaching position in the Trenton School District as of the date of this decision. This matter is being referred to the State Board of Examiners for action as that body deems appropriate.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 5, 2003

Date of Mailing: August 11, 2003

* This decision 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.*