

#431-08 (OAL Decision: Not yet available online)

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

SYNOPSIS

District brought tenure charges of conduct unbecoming and other just cause against respondent, a school social worker, seeking his dismissal on grounds that he inappropriately touched a twelfth-grade-female student on May 16, 2007. Respondent denied the allegations.

The ALJ recommended dismissal of the District’s charges, finding that the District failed to meet its burden of proving them by a preponderance of the credible evidence. The ALJ held that the student in question was not a credible witness, and the District presented no testimony or evidence to corroborate the student’s representations.

Following careful review and independent consideration of the record, including the hearing transcripts and exhibits, the Commissioner concurred with the ALJ’s conclusions and ordered the charges dismissed.

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.

October 27, 2008

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

In this matter, tenure charges were brought against respondent as a result of allegations made by a student, M.B., who reported that respondent had used force against her to touch her improperly. After four days of hearing testimony in the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) recommended dismissal of the charges, finding that M.B. was not a credible witness and “[t]he District was unable to present any other testimony or produce other evidence to corroborate M.B.’s testimony.” (Initial Decision at 11) Having carefully reviewed and independently considered the record, including the hearing transcripts and the exhibits which were entered into evidence in the course of the hearing,¹ the Commissioner agrees with the ALJ’s conclusions.

Petitioner’s case rests almost entirely upon M.B.’s accusations against respondent. The only evidence it presented – besides M.B.’s written statements and testimony – was the testimony of Pamela Hill, the school staff member to whom M.B. made the allegations, and

¹ Hearing in this matter was held on May 28, 29, 30, and June 12, 2008 (1T, 2T, 3T, and 4T, respectively). Neither party submitted exceptions.

Tracy Booton, a social worker who was called to the vice principal's office – where M.B. had been taken – shortly after M.B. reported the alleged incident. They could offer little more than accounts of what M.B. told them. They both testified that M.B. appeared upset,² but Booton recalled that when she arrived at the vice principal's office there were no marks or bruises on M.B., and neither M.B.'s hair nor her clothes were disheveled.³

In light of the foregoing, M.B.'s credibility is crucial to the disposition of this case. It is well settled that the Commissioner may not disturb the ALJ's determination that M.B. was not credible, unless a review of the record reveals that the ALJ's findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. *N.J.S.A. 52:14b-10(c)*; *see, also D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div. 2004). After examining the record, the Commissioner finds no basis to disturb the ALJ's assessment that M.B. lacked credibility.

As the ALJ stated in the Initial Decision, M.B. was evasive and combative during cross examination, responding to questions that she did not wish to answer by professing not to know or remember, challenging the relevance of questions or stating that they were a waste of her time. In addition, her testimony conflicted with the other evidence in the record and was inconsistent with her own earlier statements.

² The record reveals that M.B. made the allegations against respondent immediately after leaving his room, where she had gone to telephone an individual named "Rachel" whom she hoped would help her get Social Security benefits (S.S.I.). That call was M.B.'s second unsuccessful attempt to reach Rachel on the day in question. Respondent testified that M.B. looked upset when she finished using his telephone. Neither Hill nor Booton were aware of M.B.'s thwarted attempts to get help with S.S.I. and would not, therefore, have considered it a possible explanation for any upset that M.B. may have shown.

³ Booton also stated that in the course of working with respondent, she had observed that he was very professional and very good at what he did. She never saw him do anything inappropriate and he had a good rapport with students.

For example, the school security officer, Glenn Ross, carefully reviewed the security video tapes of M.B. leaving respondent's office on the afternoon in question. His testimony was that the video showed M.B., with whom he was familiar, walking in her normal gait with no signs of agitation or distress.

Further, as stated above, the district's witnesses indicated that directly after the alleged incident M.B.'s hair and clothes were tidy and there were no bruises or marks on her. In fact, M.B. herself so testified, and owned that she had not been hurt.⁴ The police officer, Tytriyanta Hicks – who was dispatched to the school shortly after the incident – reported that M.B. did not appear upset and showed no sign of injury. And Detective Robin Robinson, who later took M.B.'s statement, testified similarly.⁵ Such facts are inconsistent with M.B.'s allegations that she had been dragged by the neck to the floor, sat upon, wrestled, and forcibly lifted and dragged around furniture to a couch while struggling to get free.

There were other significant flaws in M.B.'s account of the alleged incident. For instance, her description of the location of the furniture and respondent's alleged use of it contemplated the normal configuration of respondent's office. On the afternoon in question, however, the furniture had been moved into the middle of the room in preparation of wall painting, according to the unrebutted testimony of respondent and a coworker, Shirley Andrews. The sofa upon which M.B. was allegedly placed was inaccessible.

The Commissioner also notes that M.B. described herself as an outspoken individual. She doesn't take "anything from anybody." (1T74-75) MB testified that she has a

⁴ Nor did respondent have any marks, scratches or bruises on the afternoon in question.

⁵ Detective Robinson also testified at the hearing that to her knowledge no criminal charges were filed against respondent.

“messed-up attitude” and a smart mouth, and everyone knew it: “I stayed in trouble because of my mouth.” “I stayed in trouble and . . . started getting kicked out of class.” (1T73-76) If boys touched her inappropriately⁶ she would “smack them,” “curse them out,” “scream,” or go tell on them; she would want people to see or hear what they were doing.⁷ (1T109) However, M.B. testified, incredulously, that during the alleged attack on her by respondent she did not try to punch, kick, slap or bite him – or even yell. She was just moving around and telling him to get off of her – in a normal speaking voice. (1T103-04) And when she left respondent’s room and spoke to Hill about the alleged incident, she “wasn’t all loud so people could hear [her].”

Numerous other inconsistencies can be found in the record of this matter. For example, the first accounts that M.B. gave of the incident – to Pamela Hill verbally and to Vice Principal Pinckney in writing – differed from later accounts in the descriptions of where and how M.B. was allegedly grabbed, which furniture was involved in the event, and whether or not respondent sat on her or lay on her. Also puzzling is M.B.’s assertion that respondent offered her \$20 to touch her vagina – after he had allegedly already done so. M.B.’s statement that no students were in the hall when she left respondent’s room conflicted with Hill’s and Ross’s testimony. M.B.’s allegation that respondent kept his room locked conflicted with respondent’s testimony and the testimony of his colleagues about the function of the room – *i.e.*, a drop-in resource for students needing assistance or experiencing problems.

⁶ Witness H.M., a former friend of M.B., testified that she would engage in sexual touching with male students, and Shirley Andrews, the school’s Health and Social Service coordinator, testified that she had had to speak to M.B. about such behavior.

⁷ M.B.’s tendency toward loud and defiant behavior was corroborated in the testimony of Pamela Hill, H.M., and Shirley Andrews.

In summary, the Commissioner concurs with the ALJ that M.B. was not a credible witness and that her testimony was itself unconvincing. As petitioner was not able to present sufficient evidence to support its charges, the charges must be dismissed.

IT IS SO ORDERED.⁸

COMMISSIONER OF EDUCATION

Date of Decision: October 27, 2008

Date of Mailing: October 27, 2008

⁸ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.