

#44-11 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :  
HEARING OF DENISE NICHOLSON, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE : DECISION  
TOWNSHIP OF ORANGE, ESSEX :  
COUNTY. :

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### SYNOPSIS

The petitioning Board certified charges of conduct unbecoming and insubordination against respondent – a tenured administrative secretary – for, *inter alia*: defiant, combative, and unprofessional behavior; failure to adhere to expectations regarding punctuality and absenteeism; failure to adhere to the district’s dress code policy; and failure to comply with the professional improvement plan(s) developed for her. Respondent denied the charges.

The ALJ found, *inter alia*, that: the Board’s witnesses presented credible testimony, supported by documentation; testimony from no less than six administrators stated that respondent was rude and abusive to students, parents, and coworkers, and that respondent failed to complete assignments and ignored directives; respondent clearly exhibited a pattern of behavior that included an inability to complete tasks and stay on task, difficulty working with fellow staff and supervisors, and problems with punctuality and attendance. The ALJ concluded that the Board has carried its burden to prove the charges against respondent, and ordered her dismissed and removed from tenured employment.

Upon independent review of the record, the Commissioner concurred with the ALJ’s findings and adopted the Initial Decision of the OAL as the final decision in this matter.

<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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January 24, 2011

IN THE MATTER OF THE TENURE :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by respondent, and the Board of Education's (Board) reply to respondent's exceptions.<sup>1</sup>

The respondent's exceptions largely reiterate the substance of her post-hearing submission at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously sustained the Board's charges. Respondent asserts that the ALJ erred in finding respondent guilty of unbecoming conduct and insubordination, and that the forfeiture of respondent's tenure is too severe a penalty. Respondent generally maintains that the Board's witnesses, who consisted of a number of different administrators, were not credible because they provided contradicting testimony with respect to who was in charge of providing respondent with her assignments, the number of assignments she was permitted to work on at one time and her work location. With respect to the Board's charge that respondent did not improve after two performance improvement plans were established, respondent contends that the Board relies on general allegations rather than specific facts, and that there was

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<sup>1</sup> The record contains no transcripts from the hearings conducted at the OAL on October 29, 2010, November 8, 2010 and November 9, 2010.

confusion as to what events occurred while the performance plans were in progress. In her exceptions, respondent also argues that her attendance and lateness record over a few months did not rise to the level of conduct that would require removal of her tenure.

In its reply, the Board urges the adoption of the Initial Decision asserting that the respondent's exceptions essentially challenge the credibility determinations made by the ALJ. The Board stresses that the choice of rejecting the testimony of a witness rests with the trier of fact and such determination must simply be reasonable. The Board maintains that the ALJ gave each witness a fair and ample opportunity to testify, and that her assessment of the witnesses' testimony was reasonable; therefore, the conclusions drawn by the ALJ should be upheld.

In the absence of any basis in the record on which to dispute the fact-finding and credibility determinations of the ALJ pursuant to *N.J.S.A. 52:14B-10(c)*, *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987), the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct and insubordination. The Commissioner finds respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by her in weighing the testimony and evidence and in concluding that the record overall supported the Board's charges. Notwithstanding respondent's contentions to the contrary, the Commissioner finds no basis in the record to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the 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)*].

Moreover, the Commissioner fully concurs with the ALJ's assessment of respondent's conduct in light of applicable law and prior decisional precedent, and agrees that the conduct proven in this proceeding amply warrants respondent's dismissal from tenured employment.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL directing removal of respondent from her position of tenured employment is adopted as the final decision in this matter.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 24, 2011

Date of Mailing: January 24, 2011

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)