

#22-13 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF WALTER CRUMP, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY : DECISION
OF CAMDEN, CAMDEN COUNTY. :

SYNOPSIS

The Board certified tenure charges of conduct unbecoming against Walter Crump, a tenured clerk in the guidance office at a Camden district middle school. The Board's charges stem from allegations of an inappropriate relationship with a 13-year-old student, L.M., and involve visits to the child's house on multiple occasions, smoking marijuana in front of the child, and communications via Facebook that included improper language, admissions of respondent's use and sale of marijuana, an offer to sell the minor marijuana, and discussion of pornography. The Board sought termination of respondent's tenured employment.

The ALJ found, *inter alia*, that: the witnesses at hearing presented credible testimony; respondent did not testify on his own behalf; the respondent visited L.M.'s home on two occasions, but both visits happened while his step-father was present and observing the interaction; L.M. observed the respondent smoking an unidentified substance while he was playing basketball at a city park, and thought the substance smelled like marijuana; there was insufficient evidence, however, to determine that it actually was marijuana; respondent admitted in interrogatories that he had used marijuana in 2007, and therefore used the substance during his employment with the Board, which began in 2005; though respondent was not a teacher, he worked in the guidance office, had regular access to pupils, and the evidence suggests that he sought to use that access to influence students in a positive way; however, the subject and matter and language in respondent's Facebook communication with L.M. was inappropriate for use by any school district employee around any minor; and the Facebook page comprised a lengthy list of inappropriate language and subject matter between an adult school district employee and a middle school student. The ALJ concluded that the evidence as a whole supports a finding of conduct unbecoming a public employee, and termination as the appropriate penalty. Accordingly, the respondent was dismissed from his tenured position.

Upon full consideration and review, the Commissioner concurred with the findings and conclusions of the ALJ, 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>

January 18, 2013

IN THE MATTER OF THE TENURE :
HEARING OF WALTER CRUMP, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY : DECISION
OF CAMDEN, CAMDEN COUNTY. :

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 the respondent, Walter Crump, and the Board of Education's (Board) reply thereto.

This case involves tenure charges brought by the Board against the respondent, a clerk in the Camden City School District. The Board charged the respondent with unbecoming conduct related to an alleged inappropriate relationship with L.M., a 13-year-old student, that included: visiting the child's house; smoking marijuana in front of the student; and having Facebook communications with the student that involved marijuana, pornography and improper language. The Administrative Law Judge ("ALJ") found that the Board proved that the respondent was guilty of unbecoming conduct because he had engaged in inappropriate Facebook communications with a student.¹ As a result, the ALJ recommended that the respondent be removed from his tenured position in the Camden City School District.

In his exceptions, the respondent argues that the ALJ erroneously sustained the Board's charge of unbecoming conduct. The respondent maintains that despite acknowledging the proof issues, the ALJ improperly concluded that the preponderance of the credible evidence

¹ The ALJ found that there was insufficient evidence to find that the respondent smoked marijuana in front of L.M. or that the two visits to L.M.'s house were inappropriate.

supported the accusation that the Facebook comments originated from the respondent. The respondent argues that, at best, the Board proved that L.M. received Facebook communications; however, the Board failed to prove that these communications were actually sent by the respondent. The respondent also asserts that the ALJ wrongfully determined that the respondent's decision not to testify tipped the scales in favor of the Board. The respondent argues that under normal circumstances it would be permissible for the ALJ to draw an adverse inference against the respondent for not testifying at the hearing, but it cannot be used to establish a fact that otherwise was not proven by the Board. As a result, the respondent contends that the Initial Decision should be rejected.

In reply, the Board reiterates the substance of its post-hearing submission at the OAL urging the adoption of the Initial Decision. The Board also maintains that the respondent's claim that he was not the person communicating with L.M. on Facebook is entirely without merit and belied by the evidence. The Board points out that the respondent admitted to having Facebook communications with L.M., and that he failed to present any evidence as to how the particular communications sent from his Facebook account were somehow altered or could have possibly come from someone else. Further, L.M. testified that "Walter Killed Crump" was the respondent's Facebook name; that he had Facebook conversations with the respondent every other night for a couple of months; that he had no reason to believe he was not talking to the respondent; that respondent's picture appeared next to the "Walt Killed Crump" account; and that the respondent spoke to him about the same things and in the same way on Facebook as he did in person. Thus, the Board contends that the ALJ's determination that the respondent had inappropriate Facebook communications with L.M. should be adopted.

With respect to the appropriate penalty, the Board maintains that the respondent should be dismissed from his tenured position. The Board stresses that the respondent admitted to using marijuana in 2007 when he was employed by the Board, and he had inappropriate Facebook communications with a student in which he cursed, glamorized fighting and disrespect toward women, and encouraged drug use. Further, the Board points out that the respondent made no attempt at the hearing to address what happened or explain the Facebook communications. Therefore, the Board contends that the respondent's conduct undermines the public confidence and reflects his unfitness to ever work for the district again.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct for having improper Facebook communications with a 13-year-old student. The ALJ's finding in connection with the characterization of respondent's behavior as unbecoming conduct is fully supported by the record and consistent with applicable law. Although the Initial Decision contains a portion of the Facebook conversation, it is important to look at the entire conversation to appreciate the nature and extent of the inappropriate exchanges. The following is the full conversation that was admitted into evidence,

Walt Killed Crump: Yurp

L.M.: wddd

Walt Killed Crump: Shyt Chilln brd ass fuk

L.M.: me too

Walt Killed Crump: I'm bout to got to sleep thtz how brd iam

L.M.: dam nikka go watch some porn lolz

Walt Killed Crump: Lolzz dnt have none....lol

L.M.: go on pornhub that the best got everything

Walt Killed Crump: No internet

L.M.: how u talkin to me

Walt Killed Crump: On my fone

L.M.: wow

Walt Killed Crump: Yeah....yo u see y u broke up wit Luz er mom bms

L.M.: howw

Walt Killed Crump: Keep calln n txtn mii hold j broo
L.M.: dam but wat I got to do with it
Walt Killed Crump: No I just said I see y y'all broke up she wax get on y nerves
L.M.: oh hell yea lolz
Walt Killed Crump: Like she Bms she told da kids thy can come over she really piisn mii off
L.M.: dammm haha lolz
Walt Killed Crump: Tht shyt not even funny ... fuck tht I'm ready to cus her ass out.
L.M.: go head
Walt Killed Crump: Am
Im
L.M.: lolz haha
Walt Killed Crump: I'm ready to leave ass I sell my house n north cmd word up
Asa
Asa
L.M.: Wow yo u got for this weeken
Walt Killed Crump: Shyt gone get high thtz it
L.M.: naa I need some cuz ma bro said he goin buy some
Walt Killed Crump: Damn I'm out just got some for mii now niccass trunk to by get da fuck outto here
Tryn
L.M.: dam u not getin no more.
Walt Killed Crump: Not rite now cuz my boi got lcked upp
L.M.: damm
Walt Killed Crump: Ik rite
L.M.: crazy
Walt Killed Crump: Thtz watz him him he sold to sum undercover
L.M.: that how it always hapen
Walt Killed Crump: Thtz y I sell to ppl ik
L.M.: yeaqa
Walt Killed Crump: Tru....wat u doing nitw
L.M.: nothing y
Walt Killed Crump: O just askn
L.M.: yaaa
Walt Killed Crump: O ... yoo I cnt wait till Sunday
L.M.: yy
Walt Killed Crump: Amc....da walking dead coming on
L.M.: wats that
Walt Killed Crump: U on line look it up its spelld like dis the walking dead that shyt crazy
Walt Killed Crump: Did u check it out
L.M.: no
Walt Killed Crump: O check it out thn hmbu
L.M.: ard brb
Walt Killed Crump: Yo bro

L.M.: yoo
Walt Killed Crump: Wyd
L.M.: listin to music looken at some shoe I wanna buy wen I get money n idk
wen is that all I got is 2 pair of shoes
Walt Killed Crump: Tru...n I got u when I get money...n did u check out da
walkn dead online
L.M.: yea n im goin to the mall on sunday n im only getin \$30 n im not buy shit
with that so ima have to buy a shirt
Walt Killed Crump: Tru...yo sum nicas jumped Shay Shay today did u hear
L.M.: haha who
Walt Killed Crump: Idk I'm going to da park tomorrow n find out
L.M.: yy u goin fuck them up
Walt Killed Crump: Mayb ... thtz my lil cuzin
L.M.: damm they fucked him bad
Walt Killed Crump: Idk but I heard not to bad
L.M.: ohh
Walt Killed Crump: Yeah...niccas wild
L.M.: ik
Walt Killed Crump: Amherst..
Smh
My bad
Lolzz
L.M.: lolz
Walt Killed Crump: Yo my fone b walln
L.M.: yy
Walt Killed Crump: Cuz it correct wat I type like if I type in other or sumthn it
will type. Sumthn else....lolzz
L.M.: haha
u putin it to smoke
Walt Killed Crump: Lolzz...ik rite sumthn
L.M.: it like the owner
Walt Killed Crump: Lolzz..smoke weed all day
L.M.: both off yall
Walt Killed Crump: Lol...hell yeah..get high till I can't get high nomore...ayyee
L.M.: wow lolz
Walt Killed Crump: Ctfu id smoke like tht nomore
L.M.: sike]
Walt Killed Crump: Lolzz..naw foereal
L.M.: w.e
Walt Killed Crump: U smoke to
Ayyee
Lopzz
Lolzz
L.M.: who me
Walt Killed Crump: Yeah
L.M.: sike

Walt Killed Crump: Lolzz
L.M.: only coulpe times
Walt Killed Crump: Sike
L.M.: wcm
Walt Killed Crump: Tht u smoke
L.M.: I did last year
Walt Killed Crump: Y u didn't tell mii I would have sparked u up
L.M.: it was last year
Walt Killed Crump: Ik damn idk tht
L.M.: yea but I don't no more
Walt Killed Crump: u should
L.M.: I should wat
Walt Killed Crump: Smoke...n. bball practice mayb monday
L.M.: naa I stoped I can do it one or 2 time but that it n with who with u?
Walt Killed Crump: Naw I'd smoke nomore
L.M.: w.e
Walt Killed Crump: Lolzz ard bro I huu tomorrow got to get up n da a.m.
L.M.: ard pce

There is no doubt that the respondent's Facebook communications with a 13-year-old student – which involved pornography, inappropriate language and the suggestion that L.M. should smoke marijuana – amount to unbecoming conduct. The term unbecoming conduct is elastic and broadly defined to include any conduct “which has a tendency to destroy public respect for [government] employees and competence in the operation of [public] services.” *Karins v. City of Atlantic City*, 152 N.J. 532, 554 (1988).

The Commissioner also finds respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account in the weighing of the testimony and evidence, and in the ALJ's conclusion that the record overall supported the Board's charge. There is no basis in the record to support the respondent's assertion that the Facebook communications were altered or were not actually sent by the respondent. Moreover, the ALJ found that L.M. and his stepfather testified credibly that the Facebook conversation in evidence was the actual conversation that occurred between L.M.

and the respondent. On the other hand, the respondent did not provide any evidence to the contrary either via hearing testimony or physical evidence. The ALJ had the opportunity to assess the credibility of the witnesses who appeared before her and made findings of fact based upon their testimony. It is well established that the Commissioner must defer to the credibility findings of the ALJ unless these prove to be 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)*.

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that the “[f]actors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the individual’s prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring.” *In re Hearing of Kittell, Little Silver School District*, 1972 *S.L.D.* 535, 541; *In re Fulcomer*, 93 *N.J. Super.* 404, 422 (App. Div. 1967). The charges in this matter are serious in nature and the respondent’s inappropriate communications with L.M. necessitates the termination of his tenured employment. Although L.M. testified that he never took the discussions seriously, 13-year-old students are impressionable and should not be engaged in those types of discussions with a staff member. Under certain circumstances mentors may use some form of slang to connect with students; however, the communications in this case went well beyond any acceptable means of communicating with a 13-year-old student. Moreover, any suggestion by a staff member that a student should smoke marijuana – whether made in jest or not – cannot be tolerated. Finally, the Commissioner does not find that the record before him provides any indication that the respondent is fit to return to the Camden City School District.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from his tenured position with the Camden City School District.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 18, 2013

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² 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*)