

IN THE MATTER OF THE TENURE :
HEARING OF COURTNEY WATSON, : COMMISSIONER OF EDUCATION
FRANKLIN TOWNSHIP SCHOOL :
DISTRICT, SOMERSET COUNTY. : DECISION
: _____ :
:

SYNOPSIS

The Board certified tenure charges of conduct unbecoming against Courtney Watson – a tenured special education teacher employed by the school district since 2004 – for alleged inappropriate language and conduct directed toward her students during the 2011-2012 school year when she was a fifth-grade resource room math teacher for nine special needs students, and a co-teacher in the mainstream “homeroom” for those students as well as other pupils. The Board alleged, *inter alia*, that respondent exhibited unbecoming conduct when she: told her rowdy special needs students that their behavior was “stupid” and that they were “acting like monkeys”; uttered profanities in the classroom on various occasions; grabbed the shirt of a student and hit him; and told a fellow staff member that she was “going to flatten” two of her students. The petitioning Board sought removal of respondent from her tenured position.

The ALJ found, *inter alia*, that: teachers are required to exercise a high degree of self-restraint and controlled behavior as they are entrusted with the custody and care of children; respondent in this matter failed to uphold implicit standards of good behavior by using profanity in the classroom; though she contends that she did not intend any racial insult, respondent made derogatory statements to her fifth-grade special education students which were racially inflammatory; respondent also engaged in inappropriate physical contact with two students, namely forcing one pupil back to his seat by grabbing his shirt or arm, and grabbing a rubber band from another student, causing it to snap back and inflict pain; respondent further told the student after the rubber band incident that she “deserved it”; respondent’s purported unhappiness with her assignment and high level of frustration – which she contends contributed to her unbecoming conduct – cannot excuse her behavior, which was unacceptable in a school setting. The ALJ concluded that – though there was inadequate evidence in the record to support the Board’s allegations related to two other incidents reported by another student – the Board has proven by a preponderance of credible evidence that respondent’s unacceptable behavior during the 2011-2012 school year constituted conduct unbecoming a teacher; accordingly, the ALJ determined that the appropriate penalty in this matter is removal from respondent’s tenured employment.

Upon full consideration and review of the record, the Initial Decision of the OAL, and the respondent’s exceptions thereto, the Commissioner adopted the ALJ’s Initial Decision with amplification. Accordingly, the respondent was dismissed from her tenured position and a copy of this decision was forwarded to the State Board of Examiners for action as that body may deem appropriate.

<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>

March 11, 2013

OAL DKT. NO. EDU 4134-12
AGENCY DKT. NO. 74-3/12

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Before the Commissioner are tenure charges flowing from in-class comments and actions by the respondent teacher, Courtney Watson. A review of the record, the Initial Decision of the Office of Administrative Law (OAL), respondent's exceptions and petitioner's replies thereto, leads the Commissioner to conclude that the Initial Decision should be adopted.

Petitioner included seven "specifications" in its tenure charges:

Specification No. 1

Ms. Watson engaged in unbecoming conduct on December 14, 2011, by stating to her pull-out special education class of educationally disabled students (who were predominantly African American in race) that their behavior was "stupid" and that they were "acting like monkeys."

Specification No. 2

On a date in early December 2011, Ms. Watson stated to one of her students (M.J.) that he was "a pain in the ass."

Specification No. 3

On a day during the week of December 5, 2011, Ms. Watson grabbed a student (M.J.) by his neck and started to choke him until he pushed her hand away.

Specification No. 4

On December 15, 2011, Ms. Watson grabbed the shirt of another student (J.H.) and hit him.

Specification No. 5

On diverse dates in 2011, Ms. Watson uttered profanities to her students. In particular, on December 14, 2011, Ms. Watson cursed at the students in her pull-out special education class; when asked by her students why she had cursed at them, she stated that “all teachers curse at kids.”

Specification No. 6

On December 15, 2011, Ms. Watson grabbed a rubber band from one of her students (A.H.W.), causing it to snap back and inflict pain upon A.H.W.’s wrist; Ms. Watson then told A.H.W. that she “deserved it.”

Specification No. 7

On December 14, 2011, Ms. Watson told a fellow staff member that she was “going to flatten” M.J. and J.H.

After four hearing days, including testimony from fourteen witnesses and the moving into evidence of fifteen or more exhibits, the Administrative Law Judge (ALJ) made factual findings based upon “the credibility of the witnesses and . . . the preponderance of the credible evidence in the record.” (Initial Decision at 19) Those factual findings served as a basis for the ALJ to uphold five of the seven specifications in the tenure charges, *i.e.* Specifications 1, 4, 5, 6 and 7.

Petitioner did not specifically except to the ALJ’s omission of Specifications 2 and 3 from the charges which he recommended for adoption. Nor does the Commissioner see any reason to sustain those particular specifications. They both arose from a statement (memorialized in Petitioner’s Exhibit P-4) by a student who did not appear at the hearing, and whose allegations were not corroborated.

As to Specifications 1, 4, 5, 6, and 7, which the ALJ did uphold, the Commissioner agrees that sufficient evidence exists in the record to support same. Respondent herself has conceded that she made the statements described in Specification 1, *i.e.*, that her

students' behavior was stupid and that they were acting like monkeys. She minimized the significance of the statements by contending (in her seventh exception) that she did not know that they would be perceived as offensive. The Commissioner is not persuaded that respondent's lack of discernment can serve to exonerate her from responsibility for using demeaning language in her directions to students.

Similarly, respondent admitted that she had made the remark identified in Specification 7, *i.e.*, that she was going to flatten two of the students. She discounted its significance by arguing (in her sixth exception) that the remark had not been uttered in front of students. The Commissioner finds this view of the incident to be myopic. Making hostile gestures and comments concerning students – in front of colleagues and staff – is unprofessional whether students are present or not. Such actions suggest that respondent was having difficulty in appropriately managing the frustrations that can arise in teaching children.

Respondent has further admitted to the portion of Specification 5 which alleges that she used profanity in class, but she contends in her second exception that the record contains no “competent” evidence that she used profanity more than once, or that her students heard her use it. She further denies that she stated that “all teachers curse at kids.” However, the Commissioner finds that the record belies respondent's exceptions to Specification 5.

First, lead teacher Robert Burt and students J.H., A.H.W., I.J., and T.R. reported in petitioner's exhibits P-5, P-6, P-7, P-8 and P-9 that respondent used profanity within the earshot of students in class. These exhibits were entered into evidence (*see* the Initial Decision at 3, n.3) and the ALJ was free to consider the statements – without the author's testimony – because strict rules of evidence are not required in the OAL. However, in point of fact, Burt,

A.H.W., T.R., and I.J did confirm their statements by testifying that respondent uttered profanities. (1T100-01, 3T15, 2T35-36, 2T59, 2T62-64, 2T71)

The comment, “all teachers curse at kids,” was reported by paraprofessional Niki Ivey to have been respondent’s reply to her students when they allegedly asked her why she cursed at them. *See*, Petitioner’s Exhibit P-3 and Ivey’s testimony at 1T128.

The ALJ considered the credibility of the witnesses and the range of evidence, and determined to accept the allegation that respondent used profanity in class. Unless it is first determined from a review of the record that such findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record, the Commissioner may not second guess those findings. *S.D. v. Division of Medical Assistance and Health Services and Monmouth County Board of Social Services*, 349 *N.J. Super.* 480, 484 n.1 (App. Div. 2002). Here, the ALJ’s findings regarding respondent’s use of profanity do not contradict the record and the Commissioner accepts them.

Two of the remaining specifications relate to incidents during which there was allegedly physical contact between respondent and students. In her third exception, respondent addresses the lesser of the two charges, *i.e.*, that she snapped student A.H.W. with a rubber band and then said that A.H.W. deserved it. Respondent admits snapping the rubber band but states that it was an accident. In the Commissioner’s view, the record supports that contention.

The significant question is whether respondent told A.H.W. that she deserved the sting from the snap – as per Specification 6. A.H.W., Ivey and safety officer Mary Figueroa reported that respondent made that remark. (Petitioner’s Exhibits P-3, P-6 and P-11; A.H.W.’s testimony at 3T13; Ivey’s testimony at 1T133-35; and Figueroa’s testimony at 1T183-84) However, the testimony and statements of Ivey and Figueroa were based upon A.H.W.’s

description of the incident and not upon first-hand knowledge. (1T133; 1T183-84) Nonetheless, the ALJ apparently deemed credible A.H.W.'s testimony that respondent had told her she deserved the sting. For the reasons discussed above, the Commissioner is not inclined to reject the ALJ's finding.

The second incident involving physical contact between respondent and a student is described in Specification 4. That specification alleges that respondent grabbed the shirt of student J.H. and hit him. The description was apparently taken from J.H.'s written statement dated January 4, 2012, about an event that took place during the previous month – before the Winter Holiday break. (*See*, Petitioner's Exhibit P-5)

Statements by multiple witnesses describe the incident differently. They indicate that respondent used physical force to put J.H. in his seat during a class in December 2011. Respondent herself acknowledged the incident during the OAL hearing. She testified that she guided J.H. back to his seat by putting her hand on his arm and turning him. (4T65) However, other evidence in the record paints a different picture.

Figueroa's statement related that J.H. came up to her on December 15, 2011 and told her that respondent had pulled on his shirt and "pulled him down in his seat." (Petitioner's Exhibit P-11) A.H.W. testified that respondent made her nervous by "slamming" J.H. down in his seat (3T12) and T.R. testified that respondent "grabbed [J.H.'s] arm and swung him around and sat him down in his chair." (2T27)

In her first exception, respondent asserts that petitioner must prove the literal allegations written in Specification 4, i.e., that respondent grabbed J.H.'s shirt and hit him. The Commissioner disagrees. The fact that the specification was incorrectly drafted does not negate

what was revealed in the record, *i.e.*, that respondent grabbed J.H. by his arm or the shirt on his arm and forcefully put him in his seat. The evidence supports the ALJ's finding that respondent:

intentionally grabbed J.H.'s shirt or arm and forcefully put him into his seat. In so doing, she made physical contact with J.H., but did not independently strike him. Both A.H.W. and T.R. witnessed the incident, and their testimony essentially corroborates J.H.'s statement to Ivey and his own written account that he was grabbed and slammed into his seat. Watson's testimony was inconsistent. On cross-examination, she first said that she verbally redirected J.H. to his seat without coming within six feet of him, but later admitted that there was physical contact with him, except that it was only to guide him to his seat without force, despite her level of anger and the extent of his misbehavior.

In turn, the ALJ's finding supports his determination that respondent manifested unbecoming conduct – regardless of whether the record revealed that respondent hit J.H. or 'slammed' him into his seat.

In summary, there is support in the record for the ALJ's determination that petitioner proved Specifications 1, 4, 5, 6, and 7 of the tenure charges. However, respondent contends that the evidence is tainted by Paraprofessional Ivey's antagonism toward her – as reported by respondent in her testimony. (*See, e.g.* 4T7-9, 4T13, 4T24, 4T29-30¹) She maintains that, as a result of that antagonism, Ivey undermined respondent's authority and efforts in the classroom, resulting in student rowdiness and tense conditions. Further, respondent suggests that Ivey influenced what the student witnesses wrote in their January 4, 2012 statements and how they testified at the OAL hearing.

The Commissioner is cognizant that Interim Vice-Principal Blamo-Hawthorne initially (on December 15, 2011) interviewed the students from respondent's class as a group – in the presence of Ivey. Individual interviews would have been preferable. However, the record

¹ Respondent also offered as a witness a substitute teacher, Trevor Rees, who testified about problems that he had with Ivey later in the 2011-2012 school year.

contains enough evidence independent of Ivey – including concessions made by respondent herself – to support the ALJ’s findings and conclusions, and the ALJ made it clear that those findings and conclusions included assessments of witness credibility.

As regards the appropriate penalty in this matter, the Commissioner acknowledges that respondent’s conduct was not as egregious as the conduct that has been reported in some prior cases relating to teacher terminations. Nonetheless, it violated the standards articulated in such cases as *In re Tenure of Lucarelli*, 97 N.J.A.R. 2nd (EDU) 537, 541 (Teachers are necessarily required to exercise a high degree of self-restraint and controlled behavior because they are entrusted with the custody and care of children), and *Hartmann v. Police Dep’t of Ridgewood*, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting *Asbury Park v. Dep’t of Civil Serv.*, 17 N.J. 419, 429 (1955)) (Misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.”)

The record suggests that respondent was not happy with her assignment in Sampson G. Smith Middle School. Lead teacher Robert Burt testified about observing respondent’s increasing frustration in her job and difficulty with self-control. (1T100-102, 1T104-105) The evidence as a whole supports that assessment. The relationship between respondent and her students seems to have become adversarial, and the responsibility for that must rest in great part with the adult – the professional. But, as the ALJ observed: “Ivey and the students were painted as the culprits, begging the question of whether [respondent] truly accepts responsibility.” (Initial Decision at 24)

Finally, the record reveals neither earnest introspection on the part of respondent nor the expression of sincere regret about the effects that her conduct may have had upon her students. For that reason, and for the reasons articulated *supra*, the Commissioner concurs with the ALJ's conclusion that the appropriate sanction is removal.

Accordingly, respondent is dismissed from her position in petitioner's school district. This matter will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 11, 2013

Date of Mailing: March 12, 2013

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