

IN THE MATTER OF THE TENURE :
HEARING OF JAMES LANG, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
TOWNSHIP OF WOODBRIDGE, :
MIDDLESEX COUNTY. :

SYNOPSIS

The Board certified four tenure charges of conduct unbecoming against James Lang – a tenured teacher employed by the school district since 2003 – for alleged unprofessional and inappropriate comments toward students and fellow staff members over the course of several school years. The Board alleged, *inter alia*, that respondent exhibited unbecoming conduct when he: referred to a female student as “Jo-Jo the Ho-Ho” and yelled “tap that” when she bent down; referred to another female student as “Jizzman”; and repeatedly made unwanted advances toward a female co-worker, subjecting her to distasteful sexual innuendos. The Board sought removal of the respondent from his tenured position.

The ALJ found, *inter alia*, that: the testimony of the respondent was less credible than that of the students and teachers presented by the Board; the honest and forthright testimony of the student witnesses revealed consistent stories of a raucous classroom environment rife with name-calling, sarcasm, and sexual innuendo; respondent’s references to several female students as prostitutes and whores disrespected and demeaned these students in a personal way, and violated all standards of decency in relating to his students; the preponderance of credible evidence established that the respondent’s conduct toward one of his co-workers, a female teacher, included sexual innuendo and direct sexual references to his desire to view her kissing another female staff member, as well as repeated unwanted invitations on Facebook and in person; 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 the implicit standards of good behavior expected of a teacher, as his remarks offended publicly accepted standards of decency. The ALJ concluded that the preponderance of the credible evidence established that the respondent committed unbecoming conduct and insubordination, and that the appropriate penalty is termination from his tenured employment.

Upon consideration and review of the full record of this matter, the Assistant Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-34* – adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the respondent was dismissed from his 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>

January 13, 2014

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

This case involves tenure charges brought by the Board against the respondent, James Lang, a tenured teacher in the Woodbridge Township School District. The Board charged the respondent with several counts of insubordination and unbecoming conduct based on allegations that the respondent engaged in unprofessional and inappropriate conduct in connection with other staff members and several students.¹ The Administrative Law Judge (ALJ) found that the respondent was guilty of unbecoming conduct and insubordination, and recommended that the respondent be removed from his tenured position.

In his exceptions, the respondent first contends that he was unlawfully suspended without pay between September 19, 2012 and January 23, 2013. The respondent reiterated the arguments advanced in his October 4, 2012 motion to compel the resumption of his salary, arguing that he was forced to request the adjournment of the September 18, 2012 hearing date because the Board had not yet produced documents that were the subject of a discovery dispute.

¹ The specific charges are outlined in the Initial Decision and will not be repeated here.

Respondent claims that it would have been an utter waste of the parties' resources, as well as judicial resources, for the Board to produce witnesses on September 18, 2012 with the understanding that they would have to appear in court a second time in order for the respondent to conduct a full and fair cross-examination. Therefore, because the respondent requested the adjournment of the hearing, through no fault of his own, he cannot be fairly charged for a "delay" as the term is contemplated by *N.J.S.A. 18A:6-14*.

The respondent also takes exception to the ALJ's credibility determinations. Specifically, the respondent contends that in premising her findings that he was not credible on his mental state at the end of the 2009-2010 school year, the ALJ ignored the fact that the alleged incidents in the charges relating to inappropriate interactions with students took place during the latter half of the 2010-2011 and the 2011-2012 school year. There was no testimony by the respondent or any other witness as to the respondent's mental state during those two years. Moreover, the respondent's candid testimony as to how he was feeling following the 2009-2010 school years should not be used to discredit his competent testimony regarding the events which allegedly transpired a year or more thereafter.

Additionally, the respondent reiterates the arguments set forth in his post-hearing submission at the OAL, arguing that the ALJ erroneously found that the counts of unbecoming conduct and insubordination outlined in the Initial Decision were supported by the credible evidence in the record. The respondent generally challenged the testimony of the student witnesses who alleged that the respondent made certain comments to them and called them inappropriate names. The respondent also cited to the transcript to argue that his testimony adequately explained the circumstances surrounding several of the allegations. As a result, the

respondent argues that the Board failed to prove the tenure charges by the required preponderance of the evidence and the Initial Decision must therefore be rejected.

In reply, the Board urges the adoption of the Initial Decision as the final decision in this matter, arguing that the respondent's exceptions merely reiterate arguments and legal theories previously considered and properly rejected by the ALJ. The Board further maintains that there is ample precedent to support his dismissal because the Board proved that on numerous occasions he made inappropriate comments of a sexual nature to various female students and staff members, making them feel embarrassed and uncomfortable.

With respect to the respondent's assertion that he was unlawfully suspended without pay between September 19, 2012 and January 23, 2013, the Board contends that the ALJ properly explained in the December 27, 2012 Order that the suspension without pay was fully warranted. The Board points out that under *N.J.S.A. 18A:6-14*, a board of education is permitted to suspend an employee without pay for an initial period of 120-days, as well as for the period of "all delays which are granted at the request of such person." The Board and the judge were prepared to move forward on September 18, 2012 when the matter was scheduled to continue, and it is undisputed that the respondent made a last minute adjournment request even though there was nothing that prevented him from continuing with the hearing. As such, the Board contends that it was fully authorized to withhold respondent's pay between September 19, 2012 and January 23, 2013, when the hearing resumed.

In reply to the respondent's contention that the ALJ improperly discredited his testimony as it related to his interactions with his students, the Board maintains that the ALJ did not discredit his testimony simply because he had a medical condition during the 2009-2010 school year. Instead, the Board asserts that the ALJ discredited the respondent's testimony

because she found him not “to be credible in his account of any of the incidents alleged, nor his denials of the allegations.” Further the Board states that the ALJ found respondent’s “overall demeanor ... [to be] unusual, in that at times his demeanor appeared as if he were detached from reality and fabricating as each question progressed. He was often evasive, and at other times presented unresponsive...dramatizations.” The Board also stresses that the ALJ found “the students to be more credible because they have no reason to fabricate the recitation of detailed derogatory language about themselves.” (Petitioner’s Exceptions at 12-13) Finally, the Board reiterated the substance of its post-hearing submission at the OAL, providing a specific response to each count of unbecoming conduct and insubordination that the respondent claims were not supported by the credible evidence in the record. (*Id.* at 13-30)

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the hearing conducted at the OAL, the Commissioner² concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct and insubordination. As a threshold matter, the Commissioner is also in accord with the ALJ – for the reasons stated in the December 27, 2012 Order – that the respondent was not illegally suspended without pay between September 19, 2012 and January 23, 2013.

Notwithstanding the respondent’s contentions to the contrary, the Commissioner finds that the ALJ’s fact-finding analysis and conclusions as to the truth of the Board’s allegations, and the characterization of respondent’s behavior as insubordinate and conduct unbecoming to be fully supported by the record and consistent with applicable law.³ Conduct

² This matter has been delegated to the undersigned Assistant Commissioner, pursuant to *N.J.S.A.* 18A:4-34.

³ The Commissioner is likewise in agreement with the ALJ’s determination – for the reasons set forth in the Initial Decision – that the Board failed to prove certain charges, including the allegations in Charge II concerning alleged comments made to Dr. Pereira.

unbecoming a public employee includes a broad range of behavior which adversely affects the morale or efficiency of the public entity or destroys the community's respect for public employees and confidence in the operation of public services. *See, e.g. In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960). Insubordination has been defined as the willful and intentional disregard of the lawful and reasonable directives of an employee's duly authorized supervisor. *In the Matter of the Tenure Hearing of Charles Motley, State-Operated School District of Newark, Essex County*, Commissioner Decision No. 252-99, decided August 4, 1999, at 2-3, *adopted* State Board (Dec. 1, 1999).

The Commissioner finds respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account in her weighing of the testimony and evidence. The only substantive argument advanced by the respondent in his exceptions which was not also presented in his post-hearing submission, was his challenge to the ALJ's determination with respect to the respondent's credibility at the hearing. 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. Based on the totality of his testimony, the ALJ found that the respondent was not credible "in his account of any of the incidents alleged, nor his denials of the allegations." (Initial Decision, page 19). 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)*. In this case, most of the allegations came down to the students' accounts of the respondent's conduct versus the respondent's denials. Since the ALJ found that the students' versions of the events were consistent and more credible,

and in the absence of any credible evidence to the contrary, there is no basis in the record to reject the ALJ's determinations of witness credibility.

Turning to the appropriate penalty in this matter, the factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher'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). It is also well recognized that by virtue of the unique position they occupy, educators must be held to an enhanced standard of behavior. As was succinctly stated in *In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional*, 1972 S.L.D. 302, 321

[Teachers] are professional employees to whom the people have entrusted the care and custody of tens of thousands of school children with the hope that this trust will result in the maximum educational growth and development of each individual child. *This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.* (emphasis added)

Despite the fact that the respondent does not have a prior disciplinary record, the Commissioner finds that his insubordination and unbecoming conduct require the termination of his employment. The charges proven in this case were not the result of an isolated incident, but rather it was demonstrated that the respondent engaged a pattern of unprofessional conduct that included the use of offensive comments directed at students during multiple school years. Notably, the ALJ found that the respondent made several inappropriate comments to students, including calling one student "Jo Jo the HoHo" and a "dirty ho" and yelling "tap that" when she bent down; referring to another female student as "Jizzman"; and calling another student "slow."

The respondent's inappropriate conduct was not only directed at the students; his conduct towards another staff member, Valerie Joao, was similarly unacceptable, and culminated with an email that was sent to Ms. Joao after the administration specifically directed him to cease from having any contact with her. Further, the record as a whole indicates that respondent maintained a classroom atmosphere that was rampant with sexual innuendo and disrespect toward students, which is clearly not conducive to a productive learning environment. Although respondent appeared to express remorse concerning his treatment of Ms. Joao, he never admitted to the actual statements that he made to her or the distasteful sexual innuendos. In light of the respondent's failure to adequately accept responsibility for any of the problems described herein, it cannot be reasonably predicted that respondent will significantly change his attitude or style. As a result, the Commissioner finds that the respondent is unfit to discharge the duties and functions of his position as a teacher.

Accordingly, 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 Woodbridge Township 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.⁴

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: January 13, 2014

Date of Mailing: January 14, 2014

⁴ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.