

EDU #4579-00
C # 371-02
C # 404-02L
SB # 49-02

IN THE MATTER OF THE TENURE HEARING :

OF BARBARA EMRI, SCHOOL DISTRICT : STATE BOARD OF EDUCATION
OF THE TOWNSHIP OF EVESHAM, : DECISION
BURLINGTON COUNTY. :

Decided by the Commissioner of Education, October 21, 2002

Decision on motion by the Commissioner of Education,
November 20, 2002

For the Petitioner-Appellant, Capehart Scatchard (Alan R. Schmoll, Esq.,
of Counsel)

For the Respondent-Cross/Appellant, Selikoff & Cohen, P.A. (Carol H.
Alling, Esq. and Steven R. Cohen, Esq., of Counsel)

The Board of Education of the Township of Evesham (hereinafter "Board") certified tenure charges of unbecoming conduct against Barbara Emri (hereinafter "respondent"), a tenured teacher in the district. The charges, which were comprised of 56 counts, alleged inappropriate behavior towards students, inappropriate treatment of colleagues, insubordination and inappropriate treatment of parents.

During the proceedings in the Office of Administrative Law, the Board withdrew 22 of the counts. On September 28, 2001, the Administrative Law Judge ("ALJ") issued an order granting partial summary decision to the respondent, dismissing 13 counts in

full and a portion of six other counts. The remaining counts involved allegations of inappropriate behavior towards students.

On August 30, 2002, following a hearing, the ALJ recommended dismissing three additional counts, but also concluded that the Board had demonstrated the truthfulness of the remaining 18 counts by a preponderance of the credible evidence. The ALJ found that those charges showed a pattern of inappropriate behavior towards students who questioned her authority, were disruptive or did not follow the rules, showed a pattern of insensitivity to the needs of special education students or other students in the inclusion classes, showed that the respondent had attempted to discourage students from complaining about her, and showed that she had made racially insensitive remarks. Although the ALJ found that the district's administrators had not followed the procedure for handling complaints against teachers set forth in the school's policy or the negotiated bargaining agreement, she concluded that this did not warrant dismissal of the charges. The ALJ pointed out that the respondent had been aware of the Board's concern regarding her conduct towards students for more than a year prior to her suspension and that, prior to hearing, the respondent was given ample opportunity to prepare her defense.

In determining the appropriate penalty, the ALJ observed that the respondent had been a teacher for over 20 years and that, prior to the 1998-1999 school year, was considered to be a good teacher. In addition, the ALJ reiterated that the Board had not followed its own procedures or the terms of the negotiated bargaining agreement in handling the complaints made against the respondent. The ALJ found that, although the Board had not shown any egregious incidents, it had shown a number of incidents

which demonstrated a pattern of inappropriate conduct. The ALJ also expressed concern about the respondent's apparent inability to admit that she had acted inappropriately. Under these circumstances, the ALJ concluded that dismissal of the respondent from her tenured employment was too severe a penalty. She therefore recommended that the respondent forfeit the first 120 days of salary withheld during her suspension, be suspended without pay for the 2002-2003 school year, suffer a two-step lowering on the salary guide, and, prior to her return, be required to take appropriate courses in anger management, the handling of disruptive students and learning techniques applicable to special education students in inclusion classes.

In a decision issued on October 21, 2002, the Commissioner approved the Board's withdrawal of 22 counts, concurred with the ALJ's summary decision dismissing 13 counts and a portion of six other counts, and agreed with the ALJ's dismissal of three additional counts in the Initial Decision. The Commissioner also concurred with the ALJ that the Board had demonstrated the truthfulness of the remaining counts. In determining the appropriate penalty, the Commissioner, like the ALJ, concluded that dismissal of the respondent from her tenured employment was not warranted under the circumstances. In so doing, the Commissioner took into consideration the respondent's long, successful teaching career, her professional and personal attributes, and the Board's failure to follow the proper procedures in handling complaints about the respondent, take corrective action to impress upon her the seriousness of her actions and include strategies in the respondent's personal improvement plan to address concerns with respect to anger management and the handling of disruptive students and special need students.

Balancing the totality of the circumstances with the need to impress upon the respondent the seriousness of her actions, the Commissioner modified the ALJ's recommended penalty. The Commissioner directed that the respondent suffer a permanent reduction of one step on the salary guide in addition to forfeiting the 120 days' salary already withheld together with an additional six months' salary and emoluments. In addition, the Commissioner noted that the respondent had no entitlement to receive a salary amount that included an award of increments during the period of her suspension following certification of the tenure charges.

The Commissioner also rejected the ALJ's recommendation that the respondent attend training classes as part of her penalty. In reliance on the State Board's decision in DiPillo v. Board of Education of the Township of Randolph, decided by the State Board of Education, 95 N.J.A.R.2d (EDU) 206, the Commissioner observed that "the State Board specifically noted that 'imposing a general continuing education program as a punishment for the specific determination of unbecoming conduct made in these proceedings would be both inappropriate and counter to the educational mission of such a program.' (emphasis supplied) DiPillo, supra at 208." Commissioner's Decision, slip op. at 94. Pointing out that the Board and its administrators were in the best position to determine the necessary courses or programs that were available to improve teaching or address deficiencies, the Commissioner concluded that it would be appropriate for the Board to pursue a training requirement for the respondent within the provisions of N.J.A.C. 6:11-13.1 et seq. and the teachers' contract.

The parties sought clarification of the penalty imposed, and, in a letter decision issued on November 20, 2002, the Commissioner clarified, inter alia, that "restoration of

the increments withheld by the Board during the pendency of the tenure proceedings in the instant matter would be at the Board's sole discretion." Commissioner's Decision of November 20, 2002, slip op. at 3.

The Board filed an appeal to the State Board, contending that dismissal of the respondent from her tenured employment was the appropriate penalty. The respondent filed a cross-appeal, seeking dismissal of the charges or, in the alternative, reduction of the penalty. She also sought oral argument.

The respondent subsequently filed a motion to supplement the record on appeal with partial transcripts of the hearing held in the Office of Administrative Law, audio tapes of that hearing, and a letter dated November 26, 2002 to the respondent from the Superintendent implementing the penalty imposed by the Commissioner. By letter dated January 13, 2003, the Director of the State Board Appeals Office notified counsel for the respondent that since the regulations governing appeals to the State Board indicate that the record on appeal includes "tape recordings" and "any stenographic transcript" from the proceedings below, N.J.A.C. 6A:4-1.8(a), it was not necessary to supplement the record with the partial transcripts included with the motion. Counsel were advised that the audio tapes of the hearing could be obtained from the Office of Administrative Law.¹ Thus, the motion before us is limited to the November 26, 2002 letter.

Upon review of the papers filed, we deny that motion. We find that the November 26, 2002 letter from the Superintendent, which implements the Commissioner's decisions in this matter by informing the respondent that she is being

¹ We note that counsel for the respondent have not provided us with those tapes.

suspended without pay for six months, is not material to the issues on appeal. N.J.A.C. 6A:4-1.9(b).

After a thorough review of the record, including the partial transcripts of the hearing, which had not been provided to the Commissioner, we affirm the Commissioner's decision as modified herein. We fully agree with the Commissioner that the Board has demonstrated the truthfulness of the remaining counts alleging inappropriate behavior towards students and that such behavior constituted unbecoming conduct. We also concur with the Commissioner that the appropriate penalty under the circumstances is for the respondent to suffer a permanent reduction of one step on the salary guide in addition to forfeiting the 120 days' salary already withheld together with an additional six months' salary and emoluments.² However, we modify the Commissioner's decision to the extent that he rejected a training program for the respondent.

In DiPillo, supra, relied upon by the Commissioner in support of his rejection of the training program recommended by the ALJ, the Commissioner had directed the district board "to provide for, and DiPillo to participate in, a program for continuing education and/or inservice training including but not limited to child development, behavioral management and psychology of learning, so as to improve her ability to understand the needs of different types of children and better comport her own behavior

² In exceptions filed to the report of our Legal Committee, the respondent contends that the Commissioner erred in failing to restore the increments withheld by the Board during the pendency of these tenure proceedings. We reject the respondent's argument and reiterate that "a tenured teaching staff member has no entitlement to salary increments during his or her suspension while tenure proceedings are pending." DiPillo v. Board of Education of the Township of Randolph, decided by the State Board of Education, August 6, 1997, slip op. at 3, aff'd, Docket #A-493-97T5 (App. Div. 1999), As in DiPillo, the respondent in the case now before us did not prevail on the merits of the tenure charges. Consequently, "she has no entitlement to such relief as is necessary to make her whole, including...restoration of her increments." Id.

and expectations to them.” 93 N.J.A.R.2d (EDU) at 25. In subsequently declining the district board’s request to clarify that portion of his decision, the Commissioner indicated that the design and implementation of the actual training program were left to the board’s discretionary authority. The State Board set aside that portion of the penalty imposed by the Commissioner, explaining that “imposing a general continuing education program as a punishment for the specific determination of unbecoming conduct made in these proceedings would be both inappropriate and counter to the educational mission of such a program.” 95 N.J.A.R.2d (EDU) at 208. The State Board found that the terms of the particular program directed by the Commissioner were “so broad as to provide no assurance that such a program would target or address respondent’s specific deficiencies demonstrated in the record.” Id.

To the extent that the State Board’s decision in DiPillo can be read to preclude the Commissioner from directing a training program as a component of the penalty imposed in a tenure case, we clarify that decision. In DiPillo, the State Board struck down the particular training program at issue therein, finding that there was no assurance that the general continuing education program directed by the Commissioner would target the respondent’s specific deficiencies. However, we find no basis for restricting the Commissioner from directing a training program in appropriate circumstances that is specifically tailored to assure that the particular deficiencies demonstrated in the record are addressed.

In this case, the Board demonstrated that the respondent had exhibited inappropriate behavior towards students. In particular, the respondent’s failure to exercise the high degree of restraint and self-control demanded of teaching staff

members was evident in her dealings with disruptive pupils and special education students. Accordingly, we direct, as a component of the penalty imposed against the respondent, that the Board arrange for and the respondent attend a program designed to provide training in anger management, handling disruptive pupils and dealing with special education students.

In addition, although our determination herein rests solely on the respondent's pattern of inappropriate behavior, we remind the Board of its responsibility to assure that teaching staff members are provided with professional improvement plans in which actions are developed to correct deficiencies in the staff member's performance, in accordance with the requirements of N.J.A.C. 6:3-4.3.

Finally, we deny the respondent's request for oral argument as not necessary for a fair determination of this matter. N.J.A.C. 6A:4-3.2.

Attorney exceptions are noted.

December 3, 2003

Date of mailing _____