

EDU # 8306-00, HDY-8305-00, 058-01 (consolidated)
C # 177-02S
SB # 27-02

IN THE MATTER OF THE TENURE :
HEARING OF B.B.,¹ :
EASTERN CAMDEN COUNTY :
REGIONAL SCHOOL DISTRICT, :
CAMDEN COUNTY, :

AND :

DIVISION OF YOUTH AND FAMILY :
SERVICES, :

PETITIONER, :

V. :

B.B., :

RESPONDENT, :

AND :

B.B., :

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE :
EASTERN CAMDEN COUNTY :
REGIONAL SCHOOL DISTRICT, :
CAMDEN COUNTY, :

RESPONDENT. :

STATE BOARD OF EDUCATION
DECISION

Decided by the Commissioner of Education, April 19, 2002

For the Respondent/Petitioner-Appellant, Law Offices of Alan L. Zegas (Alan L. Zegas, Esq., of Counsel)

For the Petitioner/Respondent-Respondent, Sahli & Padovani (Anthony I. Padovani, Esq., of Counsel)

¹ We have used initials to identify the respondent since the record in this matter and previous agency decisions were sealed by order of the Administrative Law Judge.

Since the Division of Youth and Family Services (“DYFS”) was granted the predominant interest to determine whether the factual allegations of sexual abuse against the respondent had been established, and DYFS found that those allegations had been proven, which determination was affirmed by the Appellate Division, our review is limited to consideration of the impact of the respondent’s proven conduct on the tenure charges certified against him by the Regional Board and on the Regional Board’s action in withholding the respondent’s increments for the 2001-02 school year. Given this restriction, we are constrained to affirm the decision of the Commissioner of Education to dismiss the respondent from his tenured employment and to uphold the withholding of his increments.²

Ernest P. LePore abstained.

December 1, 2004

Date of mailing _____

² In rendering our decision with regard to the tenure charges certified against the respondent, we, like the Commissioner of Education, have not reviewed the factual underpinnings for the charges since a joint order of the Commissioner and the Director of DYFS in January 2001 granted the predominant interest in this matter to DYFS. Consequently, it was the Director of DYFS who had the responsibility for reviewing the factual determinations made by the Administrative Law Judge (“ALJ”), and, like the Commissioner, we have relied upon the findings of the ALJ, which were adopted by DYFS and affirmed by the Appellate Division.

While we were not charged with reviewing the ALJ’s findings, we note that the ALJ was required to make difficult factual determinations in the face of conflicting testimony. The most striking example of this is presented by the testimony of P.P., who was the only eyewitness to observe the central incident in this case in its entirety and whose testimony contradicted that of the accusing student. P.P. stood just a few feet away from the respondent throughout the incident and, in contrast to the accuser, who had an extensive history of disciplinary problems, was president of a student service organization. The ALJ was cognizant of the difficulty engendered by the conflict between P.P.’s testimony and that of the accuser, finding that it was “difficult, if not impossible” to reconcile her testimony. In the absence of evidence that would have established definitively what had occurred, the ALJ resolved the conflict confronting her by positing that perhaps P.P. had not been paying attention to details, had not wanted to get involved since the respondent was a popular teacher, or did not want to admit, even to herself, what she had observed.

In cases such as this, the level of scrutiny with which the reviewing agency examines the record, especially the hearing transcripts, is pivotal. In view of the consequences for the respondent of a determination that allegations like those in this case are true, the role of the reviewing agency is critical to ensuring that the result is just and proper. As previously stated, because DYFS was granted the predominant interest in this particular case, we have relied on the review performed by the Director of DYFS and have based our determination with respect to the tenure charges and the increment withholding on the ALJ’s factual determinations as reviewed and adopted by that agency.