

EDU # 10130-00
C # 294-01
SB # 36-01
App. Div. # A-3610-01T5
C # 527-03
SB # 40-03

IN THE MATTER OF THE TENURE HEARING :
OF ADAM MUJICA, STATE-OPERATED : STATE BOARD OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION
PATERSON, PASSAIC COUNTY. :

Decided by the Commissioner of Education, September 7, 2001

Decided by the State Board of Education, February 6, 2002

Remanded by the Appellate Division, June 2, 2003

Remanded by the State Board of Education, August 6, 2003

Decided by the Commissioner of Education, September 2, 2003

For the Respondent-Appellant, Alpert Butler Sanders & Norton, P.C.
(John H. Norton, Esq., of Counsel)

For the Petitioner-Respondent, Gregory G. Johnson, Esq.

On February 6, 2002, the State Board of Education affirmed the decision of the Commissioner of Education to dismiss the respondent from his tenured teaching position for unbecoming conduct. In doing so, the State Board agreed with the Commissioner that the State-operated District had demonstrated the truthfulness of the tenure charges, which included allegations of inappropriate conduct towards female students, by a preponderance of the credible evidence. The State Board also agreed

with the Commissioner that the respondent's dismissal from his tenured employment was the appropriate penalty.

On June 2, 2003, the Appellate Division affirmed the State Board's determination that the State-operated District had demonstrated the truthfulness of the tenure charges against the respondent. However, the Court found that two earlier allegations of misconduct against the respondent, which he had denied and which had not been adjudicated, should not have been considered in determining the penalty. The Court therefore remanded the matter to the State Board for an assessment of the appropriate penalty without consideration of past undetermined accusations.

On August 6, 2003, the State Board remanded the matter to the Commissioner for such further proceedings as necessary for a determination of the appropriate penalty in accordance with the terms of the Court's decision. We did not retain jurisdiction.

On September 2, 2003, the Commissioner rendered his decision on remand. Upon reconsideration of the penalty, and mindful that the Appellate Division had clearly affirmed that respondent was guilty of conduct unbecoming a teaching staff member, the Commissioner, without giving any weight to past undetermined accusations, found once again that the respondent's pattern of unprofessional conduct was sufficient to warrant his dismissal.

Respondent has appealed the Commissioner's determination to the State Board. He argues that if the previous allegations against him are disregarded, dismissal is inappropriate. We disagree and, like the Commissioner, find that the pattern of conduct established by the record in this case is such that dismissal is the appropriate penalty.

As the Administrative Law Judge found and the Appellate Division affirmed, respondent routinely talked about sexual issues in at least the first, fifth and seventh period classes and routinely made inappropriate sexual gestures and sexual remarks over much of the school year. Such a pattern of conduct alone would have warranted respondent's dismissal even if he had not, as the ALJ found and the Appellate Division affirmed, attempted to manipulate one of his students not to testify against him. We therefore affirm the decision of the Commissioner that the appropriate penalty in this case is respondent's dismissal from his tenured position.

February 4, 2004

Date of mailing _____