

EDU #6702-03S
C # 70-06
SB # 12-06

IN THE MATTER OF THE TENURE :
HEARING OF RALPH McCULLOUGH, : STATE BOARD OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION
TRENTON, MERCER COUNTY. :

Decided by the Acting Commissioner of Education, February 17, 2006

Decision on motion by the State Board of Education, October 4, 2006

For the Petitioner-Respondent, Sumners George
(Thomas W. Sumners, Jr., Esq., of Counsel)

For the Respondent-Appellant, Ralph McCullough, pro se

On March 17, 2006, Ralph McCullough (hereinafter "appellant"), a tenured custodian with the Board of Education of the City of Trenton (hereinafter "Board"), filed an appeal to the State Board from a decision of the Acting Commissioner¹ dismissing him from his tenured employment. The Acting Commissioner agreed with the Administrative Law Judge that the appellant was rude and abusive at a meeting with other school employees, that his conduct at the meeting was unbecoming and insubordinate, and that he represented a potential danger if he returned to work.

On June 26, 2006, the appellant filed a motion with the State Board to supplement the record on appeal with an audio cassette tape containing testimony

¹ We note that on October 16, 2006, Acting Commissioner Lucille E. Davy was confirmed as the Commissioner of Education.

purportedly given at his “last tenure hearing” by the Board’s Buildings and Grounds Coordinator. On October 4, 2006, we denied the appellant’s motion, explaining:

The regulations governing administrative proceedings are clear in providing that a copy of a sound recording of a hearing obtained from the Office of Administrative Law (“OAL”) is “unofficial.” N.J.A.C. 1:1-14.11(b). As the Commissioner noted in C.H., on behalf of minor child, J.H. v. Board of Education of the Princeton Regional School District, decided by the Commissioner of Education, August 11, 2004, slip op. at 4, n.1, “[a]n unofficial copy of the sound recording of OAL proceedings may not be substituted for the required transcript, and will not be considered if so submitted.”¹ Moreover, in this instance the tape purportedly contains testimony from another case, which the appellant identifies as his “last tenure hearing.”² In addition, it appears that the tape is not a copy obtained from the Office of Administrative Law since it contains conversations along with narrative and argument by the appellant prior to the start of the recorded testimony. Nor has the appellant demonstrated that the testimony on the tape is relevant to the conduct alleged in the instant charges.

¹ We note that transcripts of hearings in the Office of Administrative Law may be included in the record if they are obtained in accordance with the regulations governing such proceedings and prepared in accordance with standards established by the Administrative Director of the Courts. N.J.A.C. 1:1-14.11. As set forth in N.J.A.C. 1:1-18.1, the Clerk of the Office of Administrative Law must certify the record in proceedings before OAL. While N.J.A.C. 1:1-14.11(b) provides that an unofficial copy of a sound recorded proceeding may be obtained, such unofficial copies are not part of the record. Nor do the regulatory provisions authorize the inclusion in the record of unofficial transcriptions of such recordings.

² We note that the Board had certified tenure charges of unbecoming conduct and insubordination against the appellant in 1999. The Commissioner determined in that case that the Board had demonstrated that the appellant had used abusive language and acted in a hostile manner towards the building principal, and he concluded that the appropriate penalty for such conduct was forfeiture of the 120 days’ salary withheld pursuant to N.J.S.A. 18A:6-14. The Commissioner’s decision was affirmed by the State Board. In the Matter of the Tenure Hearing of Ralph McCullough, decided by the Commissioner of Education, September 6, 2002, aff’d by the State Board of Education, April 2, 2003.

The appellant has now filed a request that the State Board take official notice of that tape. We decline to do so substantially for the reasons outlined in our decision of October 4, 2006. Pursuant to the regulations governing administrative proceedings, an audio tape of a hearing held in the Office of Administrative Law is unofficial and may not be substituted for the required transcript. In addition, the tape at issue contains a conversation between the appellant and an unidentified party, along with narrative and argument by the appellant. Under these circumstances, we deny the appellant's request.

Thelma Napoleon-Smith recused herself.

December 6, 2006

Date of mailing _____