

OAL DKT NO EDU 6475-96
AGENCY DKT NO 460-11/94

IN THE MATTER OF THE TENURE :
HEARING OF WILLIAM MORALES, : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION
OF TRENTON, MERCER COUNTY. :
_____:

The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Exceptions were timely filed by the Board in accordance with *N.J.A.C* 1:1-18.4. No replies were filed by respondent.

The Board's exceptions initially contend that there is sufficient evidence to sustain Charge No. 1, that respondent showed photographs of partially nude women to his students. In so doing, the Board challenges the credibility determinations reached by the ALJ, particularly objecting to the weight accorded to the testimony of witnesses D.R, Thaddeus Robinson, and L.V. (Exceptions at pp. 4-5). The Board further avers that, even if the Commissioner concurs with dismissal of Charge No. 1, because the ALJ found in charges 3,4 and 6 that the respondent repeatedly engaged in conduct evincing a lack of judgment, respondent's tenure should nonetheless be removed. The Board asserts that, although separately these charges may not result in tenure removal, in combining all of them together, as they occurred within the same school year, such conduct is unbecoming and tenure removal is not too harsh a penalty. (Exceptions at pp. 6-7)

The Board next argues that, if the Commissioner determines that respondent should not lose his tenure rights, he should, at the very least, penalize respondent for more than a 120-day loss of pay and an two annual increments. In justification for such position, the Board refers to *Randolph Twp. Bd. of Ed. v. Mary Ellen DiPillo*, 95 *N.J.A.R.* 2d, 206, aff'd w/mod., 93

N.J.A.R. 2d EDU 13, where the State Board of Education found it appropriate for a teacher to lose six months pay for causing a child to get on his knees and beg for a book where the teacher also had a history of yelling at students and telling them to “shut up.” The Board notes that, “there should be similar cause for concern about the respondent’s conduct as recognized by the ALJ in the within matter.” (Exceptions at pp. 7-8)

Lastly, the Board objects to the ALJ’s finding that it must pay respondent lost wages for the time period between April 15, 1996, when respondent notified the Department that his criminal indictment was dismissed and July 23, 1996, the date the matter was filed with the OAL. While respondent did not cause a delay in restoring this matter to the Commissioner’s active list, neither was the Board responsible for such delay. Thus, the Board claims it should not be required to pay respondent more than two months of lost wages when it did nothing to cause the delay in restoring this matter to the Commissioner’s active case list. (Exceptions at pp. 8-9)

Upon review, the Commissioner determines to affirm the decision of the ALJ with modification as noted below. Initial, the Commissioner is unpersuaded by exception arguments regarding charge number one. Although the ALJ’s findings herein turn, to a great extent, on the credibility of witnesses and the weighing of evidence, the Commissioner is satisfied, based on the record as a whole, that the ALJ appropriately measured conflicts, inconsistencies, and the plausibility of content in deciding which testimony to credit, and the proper weight to assign thereto, in reaching the factual findings and conclusions herein. It is noted that credibility determinations of the finder of fact, who observed the witnesses first-hand, are to be accorded great weight in the absence of any meaningful basis on which to challenge them. This is so especially where, as here, transcripts of the proceedings were not provided by either party.

As to the appropriateness of the recommended penalty, the Commissioner finds it necessary to balance the totality of the record herein with the need to stress most emphatically that behavior of the type evinced by respondent cannot be countenanced in the school environment. Accordingly, the Commissioner concurs with the ALJ that, in view of all the facts in this matter and respondent’s prior history, the extreme penalty of loss of tenure does not appear to be warranted. However, he does not find loss of 120 days salary and two increments to be a penalty sufficient to impress upon respondent and others the seriousness of the charges proven in this matter, which include inappropriate remarks regarding a student’s menstrual cycle and an unwarranted physical response in dealing with a student who was himself not physically unruly and did not pose a threat to anyone. Rather, the Commissioner modifies the recommended

penalty of the ALJ to include a loss of salary for six months plus the withholding of two increments.

Finally, with regard to the Board's contention that it should not be responsible for back pay between the period respondent notified the Department that his criminal indictment was dismissed and the date the matter was filed with OAL, the Commissioner modifies the date from which the Board must reimburse respondent to April 23, 1996, the date of the Department's *receipt* of respondent's letter to reactivate his case, rather than April 15, 1996, the date on the face of the notice sent to the Commissioner. Concededly there was a delay in transmitting this case to OAL, the reason for which is not ascertainable from the record herein; however, *N.J.S.A.* 18A:6-14 clearly holds that the Board is responsible for payment of salary during tenure proceedings except in the event of delay caused by the charged employee, stating,

Upon certification of any charge to the commissioner, *the board* may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the commissioner of education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) shall be paid beginning on the one hundred twenty-first day until such determination is made."

Accordingly, the initial decision of the OAL is affirmed for the reasons expressed therein except as above modified with respect to penalty and the starting date for calculation of respondent's back pay following removal of this matter from abeyance status. The Commissioner hereby directs that respondent forfeit the 120 days' salary withheld following certification of the within tenure charges, plus salary for two additional months, and that he further be denied employment and adjustment increments for the 1995-96 and 1996-97 school years as recommended by the ALJ.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION