

OAL DKT. NO. EDU 7071-96
AGENCY DKT. NO. 178-5/96

IN THE MATTER OF THE :
TENURE HEARING OF :
DEBORAH SUITT-GREEN, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL : DECISION
DISTRICT OF THE CITY OF :
NEWARK, ESSEX COUNTY. :
_____:

SYNOPSIS

State-operated School District certified tenure charges of unbecoming conduct, corporal punishment and insubordination against respondent teacher.

Initially, the ALJ denied respondent's motion to dismiss certain charges based on alleged incidents that occurred between 1989 and 1993 due to application of *res judicata*, collateral estoppel or *N.J.S.A. 18A:6-13*. ALJ found that the charges were not litigated in 1993; the Board did not render a decision on the merits; and the District was not barred from subsequent refiling of the charges. Next, in light of overwhelming testimony and documentary evidence, the ALJ found that the District did prove incidents documenting respondent's propensity to become upset, yell, scream, use offensive and abusive language, engage in irrational behavior and lose self-control among students and her colleagues. ALJ also found that the District gave her numerous reprimands and negative memoranda. Thus, the ALJ concluded that respondent had given the District just cause for dismissing her. Considering the seriousness of the offenses, the number of offenses and the length of time over which these offenses were committed, from 1989 to 1996, the penalty of dismissal was not excessive or unreasonable. (*Redcay*) ALJ ordered respondent dismissed from her tenured teaching staff position.

Commissioner adopted findings and determination in initial decision as his own and directed respondent be dismissed from her position as of the date of this decision. Matter was referred to the State Board of Examiners for action as it deems appropriate.

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The record of this matter and the initial decision rendered by the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions were timely filed pursuant to *N.J.A.C.* 1:1-18.4, and were duly considered by the Commissioner in reaching his determination herein.

Having conducted his own careful and independent review of the entire record in this matter, which includes transcripts of the four days of hearing conducted at the OAL¹, and the exceptions filed by respondent, the Commissioner determines to affirm the findings and conclusion of the Administrative Law Judge (ALJ) for the reasons well expressed therein.

Initially, the Commissioner affirms the ALJ’s denial of respondent’s motion to dismiss certain of the within charges based on alleged incidents which occurred between April 7, 1989 and June 24, 1993. Notwithstanding respondent’s exceptions, which continue to advance the arguments with respect to these charges presented below², the Commissioner is in full

¹ The record reflects that the hearing was held on May 5, 6, 7, and 9, 1997.

² Respondent again asserts that because these charges were previously considered by the Board on October 26, 1993, and a decision was made at that time that there was not sufficient probable cause to certify them to the Commissioner, such determination was a “final adjudication” with respect to these charges, requiring their dismissal here. Respondent also renews her alternative argument that, as these charges are based on incidents

accord with the ALJ's consideration and resolution of this motion detailed on pages 22-28 of the initial decision.³

Next, the Commissioner accepts the ALJ's factual findings (Initial Decision at pp. 28-31), finding these to be amply supported by the record before him. Despite respondent's exception assertions to the contrary, he finds no basis either in the transcripts or in the record as a whole to challenge the ALJ's credibility determinations, being fully satisfied that the ALJ's recitation of testimony is both accurate and thorough, and that he carefully measured conflicts, inconsistencies and potential biases in deciding which testimony to credit in reaching such findings of fact. In this regard, the Commissioner is unpersuaded by respondent's attempts to discredit certain of the District's witnesses by advancing unsubstantiated allegations aimed at impugning their general character and, in some cases, undocumented accusations of their involvement in criminal conduct.⁴

In making his determination herein, the Commissioner duly recognizes, as was pointed out in respondent's exceptions, that the within charges were filed despite "satisfactory" ratings in respondent's formal evaluations completed during the period covered by such charges. Specifically, respondent maintains that such ratings in two specific categories, "Functions as a member of the total school program" and "Meets accepted standards of professional behavior" included on her evaluation forms, undermine the legitimacy of the charges in that they indicate

which were considered and not certified by the Board in 1993, they are now barred by *N.J.S.A. 18A:6-13*, which places a 45 day time limitation on the period in which a board must certify charges.

³ It is additionally noted that the initial decision establishes that the majority of these "contested charges" were either withdrawn by the District during the course of the hearing or found by the ALJ not to have been proven by the District. (Charges 1a, 3e, 3f, 3h, 3i and 3k, and all of 4.)

⁴ Particularly troublesome was a declaration, raised for the first time in respondent's exceptions, that one of the District's witnesses had been charged with a serious criminal violation. Respondent also enclosed a newspaper article which, it is assumed, was intended to lend credence to her charge. The Commissioner admonishes respondent for this unwarranted and improper submission and stresses that this material was neither reviewed nor considered in the within determination.

“that the incidents collectively amassed were individually of minor consequence and of such insignificance that no warnings via the evaluative process” were necessary, (Respondent’s Exceptions at p. 5) The Commissioner categorically rejects such a contention. Nor can he reasonably conclude, as argued by respondent, that she had no reason to believe that her conduct during this period was unprofessional, as her evaluations specifically indicated the contrary. (*Id.*) Rather, the Commissioner opines that “[t]he absence of comment in evaluations of respondent’s performance regarding the incidents now forming the tenure charges does not render these charges invalid.” *Morris School District Board of Education v. Christine Brady*, 92 N.J.A.R. 2d (EDU) 410, 419. Rather, he observes that it is oftentimes customary that individuals who routinely perform these evaluations are specifically directed to record observations which they actually witness in the classroom setting and prepare their evaluations only upon that basis. (See *Brady, supra.*) That no mention of any of these incidents was made in any observation or evaluation is explicable by the fact that none of the conduct at issue herein was observed while in a formal observation setting. Indeed, the Commissioner concludes that the witnesses in this case who wrote detailed incident reports contiguously with the specific events provide a more trustworthy version of respondent’s performance in these areas than customary performance evaluations conducted in the regular course of business. Moreover, given the numerous reprimands and negative memoranda issued to respondent by her superiors and administrators in the District during this period (see Exhibits P-3, P-7, P-8, P-14, P-15, P-16, and P-18), the Commissioner finds disingenuous her assertion that she had no knowledge that her conduct was viewed as unbecoming or that she was in any way prejudiced by the absence of comment to this effect on her evaluation forms.

The Commissioner is in full agreement with the ALJ that the evidence advanced by the District, both in terms of testimony and documentary evidence elicited from a wide range of staff members and administrators, is “overwhelming.” (Initial Decision at p. 37) The incidents proven herein document respondent’s propensity to become upset, yell, scream, use offensive and abusive language, engage in irrational behavior and lose self-control. Particularly disquieting is respondent’s categorical denial of the details of each of these incidents and her failure to adequately explain the facts in the testimony of the large number of District witnesses. As such, the Commissioner cannot infer, based on this record, that respondent’s conduct was an aberration, nor can it be reasonably predicted, based on her failure to accept responsibility for any of her actions herein, that it is more likely than not that such conduct would not be repeated in the future.

Finally, as to the appropriate penalty in this matter, the Commissioner was particularly cognizant that it has long been recognized that, by virtue of the unique position they occupy, educators must be held to an enhanced standard of behavior. As was succinctly stated in *In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional*, 1972 S.L.D. 302, 321

[Teachers] are professional employees to whom the people have entrusted the care and custody of tens of thousands of school children with the hope that this trust will result in the maximum educational growth and development of each individual child. *This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.*
(Emphasis added)

Likewise, he is mindful that “[u]nfitness for a position under the school system is best evidenced by a series of incidents.” *Redcay v. State Board of Education*, 130 N.J.L. 369, 371 (Sup. Ct. 1943), *aff’d* 131 N.J.L. 326 (E. & A. 1944). While considering respondent’s apparently sound

teaching record and the length of her employment within the District, the Commissioner is nonetheless satisfied that the charges and proofs established herein are not “trivial” but rather reflect a pattern of professionally unacceptable conduct which cannot be tolerated in a school setting, and comprise the “series of incidents” envisioned by the Court in *Redcay*, warranting respondent’s loss of her tenured position.

Accordingly, the initial decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. Respondent is dismissed from her tenured teaching position with the State-operated School District of the City of Newark as of the date of this decision. This matter is further referred to the State Board of Examiners, pursuant to *N.J.A.C. 6:11-3.6*, for action as it deems appropriate.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

DATE OF DECISION: October 14, 1997