

IN THE MATTER OF THE TENURE :  
HEARING OF VINCENT MARTONE, :  
STATE-OPERATED SCHOOL DISTRICT : COMMISSIONER OF EDUCATION  
OF THE CITY OF JERSEY CITY, : DECISION  
HUDSON COUNTY. :  
\_\_\_\_\_:

SYNOPSIS

District certified tenure charges against respondent supervisor of mathematics for alleged unbecoming conduct due to his distribution of a portion of the 1995 Early Warning Test (EWT) knowing that it was a secure test, copies of which were not to be possessed or distributed by or to any school personnel.

ALJ found that the District proved by more than a preponderance of evidence that respondent knowingly participated in and furthered a breach of security of the EWT of 1995 by possessing and distributing it, thus, constituting unbecoming conduct. Moreover, in light of the cost to the State in reconstituting the exam and respondent's complete lack of candor and remorse, ALJ found respondent's conduct warranted a serious penalty. ALJ ordered respondent terminated from his position.

Citing *Redcay, In re Tordo*, and others, the Commissioner adopted the findings and determination in the initial decision. Commissioner ordered respondent dismissed from his tenured position and the matter transmitted to the State Board of Examiners for further appropriate action.

December 18, 1997

OAL DKT. NO. EDU 11167-97  
AGENCY DKT. NO. 424-9/96

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The record of this matter, including transcripts of the hearing, and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions and petitioner's reply thereto were timely filed in accordance with *N.J.A.C.* 1:1-18.4.

Initially, respondent sets forth several arguments to rebut the factual findings of the Administrative Law Judge (ALJ) with regard to respondent's knowledge of test security procedures and his intent in handing over the test by referring the Commissioner to specific testimony presented at hearing. (Exceptions at pp. 1-5) Respondent then excepts to the recommended penalty of removal. Respondent cites to several cases wherein the Commissioner has determined that such penalty is not warranted, arguing that there is no basis for an automatic termination if the circumstances do not warrant it, but, rather, any penalty imposed must be carefully crafted to the specific claims proven. (*Id.* at p. 5) Respondent offers an alternate penalty, which would preserve his teaching career but end his supervisory career "for his admitted failure to maintain his knowledge of the requirements surrounding EWT test security." (*Id.* at p. 8) These sanctions include respondent's payment of \$7,603 in restitution to the District, forfeiture of his administrative certificate and all endorsements thereon, as well as the tenure and seniority rights accrued under his administrative certificate and endorsements. (*Id.*) He contends that, "these punishments are sufficiently drastic to match the damage unwittingly done by him." (Exceptions at p. 9)

In reply, petitioner reviews the testimony and evidence in rebuttal to respondent's arguments and urges adoption of the ALJ's initial decision as correct. (Reply Exceptions at pp. 4-14) Petitioner then avers that it proved, by more than a preponderance of evidence, that respondent received, retained and distributed the mathematics portion of the 1995 EWT. (*Id.* at p. 14) Lastly, petitioner submits, with regard to penalty, "that there is nothing which could mitigate the egregious actions [of respondent]" and that "[h]is attempt at fashioning his own punishment \*\*\* is much too little, much too late." (*Id.* at p. 17)

Upon a careful and independent review, the Commissioner concurs with the findings and conclusions of the ALJ that respondent's actions constitute unbecoming conduct. Further, the Commissioner concurs with the ALJ that the tenure charges, as proven, are sufficient to warrant respondent's termination from employment, pursuant to *N.J.S.A.* 18A:6-10 and 11.

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. See *In re Morrison*, 216 *N.J. Super.* 143 (App Div 1987).

As to the appropriateness of the recommended penalty, the Commissioner holds that breaches in statewide test security were a matter of utmost concern and will be dealt with severely. As stated by Assistant Commissioner, Division of Academic Programs and Standards, in a two-page letter dated April 19, 1995:

**\*\*\*the reproduction of secure test items \*\*\* is strictly prohibited.** *Individuals who violate this prohibition risk personal sanction which could include suspension or revocation of their professional license.* (Boldface *sic*) (emphasis supplied) (Exhibit P-7 in Evidence)

The position of this agency is both clear and unequivocally communicated to school districts and staff throughout the state. Breaches of test security will not be tolerated. Therefore, the Commissioner finds that a single incident of this nature is "sufficiently flagrant" to warrant an employee's dismissal, notwithstanding where, as here, respondent has had a long career with an apparently unblemished record. *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). Further, while the Commissioner finds that respondent's behavior, as related by the ALJ in the initial decision, is particularly unbecoming for a supervisor, it cannot be countenanced for *any* teaching professional. The Commissioner has stated that "[b]eing a teacher requires \*\*\* a consistently intense dedication to civility and respect\*\*\*." *In the Matter of the Tenure Hearing of Robert H. Beam*, 1973 *S.L.D.* 157, 163. Further, teachers "\*\*\*must exhibit a high degree of exemplary behavior." *In re Tyler*, 13 *N.J.A.R.* 297, 308 (1991). This is so in that

[t]eachers are public employees who hold positions demanding public trust, and in such positions they teach, inform, and mold habits and attitudes, and influence the opinions of their pupils.\*\*\*  
*In the Matter of the Tenure Hearing of Ernest Tordo, School District of the Township of Jackson, Ocean County*, 1974 *S.L.D.* 97, 98.

Therefore, the Commissioner finds that, in view of all the facts, respondent's proposed penalty wherein he would abandon his supervisor's position in favor of a teaching position, would not be appropriate. Rather, in order to adequately impress upon respondent, and others, the extreme seriousness of his infraction and the Commissioner's concern about the poor judgment displayed during the incidents leading to the instant tenure charges, the Commissioner finds that loss of tenure is fully warranted in this instance. Therefore, the Commissioner adopts the recommended penalty of the ALJ and further finds this matter should be forwarded to the State Board of Examiners for such action it may deem appropriate with regard to respondent's certificates.

Accordingly, for the reasons expressed therein, the Commissioner affirms the initial decision of the OAL and hereby orders that respondent be dismissed from his position as tenured teacher with the State-operated School District of Jersey City as of the date of this decision. This matter shall be transmitted to the State Board of Examiners, pursuant to the requirements of *N.J.A.C.* 6:11-3.6, for action against respondent's certificate as it deems appropriate.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 18, 1997