

IN THE MATTER OF THE TENURE :  
HEARING OF TERESE CAPRIGLIONE, :  
STATE-OPERATED SCHOOL DISTRICT : COMMISSIONER OF EDUCATION  
OF THE CITY OF NEWARK, ESSEX : DECISION  
COUNTY. :  
\_\_\_\_\_ :

SYNOPSIS

District certified tenure charges of unbecoming conduct against respondent tenured guidance counselor based on her having pled guilty to Disturbing Results of an Election, in violation of *N.J.S.A.* 18A:14-65, wherein she admitted knowingly interfering with the orderly conduct of the Newark School Board Election held on April 7, 1992, which resulted in the casting of illegal votes.

Commissioner determined that respondent's actions of fraudulently casting and aiding others in the casting of illegal votes were, standing alone, sufficient for the establishment of unbecoming conduct on behalf of a teaching staff member. However, having considered the proven charges and all the remaining factors, the Commissioner concluded that respondent's conduct, although egregious and unprofessional, did not, based upon the unique circumstances existing in this matter, warrant her dismissal from her tenured position. Commissioner ordered respondent to suffer a seven-month unpaid suspension, which period shall include the 120-day unpaid suspension already served, and forfeiture of her increments for the 1998-99 and 1999-2000 school years. Commissioner directed that a copy of this decision be forwarded to the State Board of Examiners, which is considering action against respondent's certificate based on the criminal conduct underlying the instant matter, and directed that the within penalty be in addition to any suspension which that Board may ultimately choose to impose.

April 22, 1998

IN THE MATTER OF THE TENURE :  
HEARING OF TERESE CAPRIGLIONE, : COMMISSIONER OF EDUCATION  
STATE-OPERATED SCHOOL DISTRICT : DECISION  
OF THE CITY OF NEWARK, ESSEX :  
COUNTY. :  
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For Petitioner, Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross  
(Cherie L. Maxwell, Esq.)  
For Respondent, Balk, Oxfeld, Mandell & Cohen (Sanford R. Oxfeld, Esq.)

PROCEDURAL HISTORY

This matter was opened before the Commissioner of Education on November 21, 1996, through the District's filing of tenure charges of unbecoming conduct against respondent.<sup>1</sup> Simultaneously with the submission of the tenure charges, the District submitted a Motion for Summary Decision seeking a judgment of forfeiture of respondent's public employment pursuant to *N.J.S.A. 2C:51-2*, as a result of her guilty plea to Disturbing Results of an Election, in violation of *N.J.S.A. 18A:14-65* and *N.J.S.A. 2C:2-6*, wherein she admitted to knowingly interfering with the orderly conduct of the Newark School Board Election held on April 7, 1992, which resulted in the casting of illegal votes. By letter dated November 21, 1996, respondent was accorded 20 days within which to file an answer to the tenure charges and the motion for summary decision. Respondent's answer to the tenure charges was filed on

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<sup>1</sup> It is noted that the District initially filed charges in this matter on or about November 6, 1996, and by letter dated November 20, 1996, withdrew those charges, requesting their return to the District, and concurrently filed the within charges.

November 27, 1996<sup>2</sup>, and her response to the District's summary decision motion was filed on January 3, 1997. Upon review of the parties' papers with respect to the District's motion for summary forfeiture of respondent's employment, the Commissioner issued a letter decision on January 27, 1997, advising that pursuant to *N.J.S.A. 2C:51-2*, as amended by *P.L. 1995, c. 250*, he did not have jurisdiction to entertain applications for forfeiture of public employment and he, therefore, denied the District's motion for summary ruling, reminding the parties that there was, however, no preclusion to the District moving for summary decision with respect to any aspect of the pending tenure matters which were properly before him for adjudication. Subsequently, on March 5, 1997, the District filed a Motion for Summary Decision on the tenure charges of unbecoming conduct against respondent, seeking her removal from the District.<sup>3</sup> Respondent's reply to the motion was received on March 24, 1997, with the District's response to such reply being submitted on April 1, 1997. On April 22, 1997, respondent filed a motion to compel the District to return him to active salary status effective March 19, 1997. The District's reply to this

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<sup>2</sup> By letter dated December 2, 1996, respondent was reminded that her response to the District's summary decision motion, which was not included with her answer, was due by December 13, 1996. On December 3, 1996, respondent requested an additional 30 days within which to respond to this motion, and was advised by letter dated December 6, 1996, that, in view of the fact the applicable regulations would have provided respondent two additional 10-day periods had she not filed a timely answer, and in consideration of the year-end holiday schedule, she would be accorded until January 6, 1997, or an additional 24 days, within which to file her answer to the motion.

<sup>3</sup> By letter dated March 10, 1997, respondent challenged the Commissioner's authority to entertain a motion for summary decision here, contending that, pursuant to *N.J.A.C. 1:1-12.1 et seq.*, when a case has not yet been assigned to a judge, such motions may be filed with the Clerk. She maintains that there is nothing in the regulations which permit the Commissioner to entertain a motion for summary decision and, therefore, the within motion has been brought prematurely and should, rather, be handled by the Administrative Law Judge assigned to the case. The Commissioner observes that unless and until a matter is transmitted to the Office of Administrative Law, it is governed by the regulations of this agency, specifically, *N.J.A.C. 6:24-1.1 et seq.* Given that *N.J.A.C. 6:24-1.13* specifically contemplates summary judgment motions before the Commissioner, respondent's contention in this regard is without merit and will not be further addressed herein. Respondent's letter alternatively urged that, if it were determined that this motion was properly before the Commissioner, she be provided an additional period of time over and above the 10 days previously accorded her to respond to the District's motion. By letter dated March 14, 1997, respondent was advised that her objection with respect to the premature submission of motions was more appropriately addressed in reply submissions and, if so raised, would be decided by the Commissioner in his final decision in this matter. Concurrently, respondent's request for additional time to respond to the District's motion was extended to March 24, 1997 (an additional 8 days) with the proviso, as was urged by the District, that such extension would be deemed a delay in proceedings at respondent's request, and would operate, pursuant to *N.J.S.A. 18A:6-14*, to concomitantly defer respondent's resumption of salary during this period.

motion and respondent's response to the reply were filed May 5, 1997 and May 7, 1997, respectively.

### BACKGROUND

The uncontroverted material facts advanced by the District in this matter state:

On or about April 7, 1992, Terese Capriglione, a guidance counselor employed by the Newark School District, assisted others in the casting of illegal votes in the school board election. By her own admission she went to the polling place where her sister-in-law, Maryann Capriglione, was working as a challenger, to insure that Maryann wouldn't panic if people voted more than once. See Appendix of Evidence 3, Transcript of Pleas, p. 12, lines 13-16. Ms. Capriglione acknowledges that she watched her sister-in-law to make sure she would do nothing to stop individuals from voting more than once. *Id.* at p. 12, lines 22-25. If Maryann reacted to this scheme, Terese Capriglione was to hold her back, tell her to ignore it. *Id.* at p. 12, lines 23-25. By her own admission, she was aware that the purpose of this activity was to cast illegal votes and elect a certain candidate. *Id.* at p. 13, lines 1-5. As a result of this behavior, Ms. Capriglione was indicted on September 28, 1995 for the following crimes: Conspiracy (*N.J.S.A. 2C:5-2*; Official Misconduct (*N.J.S.A. 2C:2-6*; *N.J.S.A. 18A:14-65*); and Illegal Voting (*N.J.S.A. 18A:14-78*). See Appendix of Evidence 1.

Ms. Capriglione subsequently pled guilty to violating *N.J.S.A. 18A:14-65*; *N.J.S.A. 2C:2-6*. See Appendix of Evidence 2. The indictment states that Terese Capriglione did knowingly interfere with the orderly conduct of the Newark School Board Election held on April 7, 1992 by casting and/or aiding others in the casting of illegal votes.

On October 17, 1996 tenure charges for unbecoming conduct were filed against Terese Capriglione, by Petitioner, State-Operated School District of Newark. A response dated October 21, 1996 was submitted on her behalf.

(District's Brief in Support of Summary Decision, March 4, 1997 at pp. 1-2)

The instant tenure charges were certified by the State-operated District on November 18, 1996, and filed with the Commissioner on November 21, 1996.

### POSITION OF THE PARTIES

#### MOTION FOR RESUMPTION OF SALARY

##### Respondent

Respondent states that, pursuant to *N.J.S.A. 18A:6-14*<sup>4</sup>, she was entitled to be returned to active salary status as of March 19, 1997. She reasons that the charges against her were processed as of November 18, 1996, and she was suspended without pay effective November 19, 1996, commencing the running of the 120-day time line specified in statute, which period, respondent argues, terminated on March 18, 1997. As such, she contends that she was statutorily entitled to be returned to salary status on March 19, 1997, the 121st day. (Respondent's Motion to Return to Active Salary Status, at p. 2)

She advances that the District's position that resumption of her salary should be delayed by 33 days due to her requested 26-day extension to file her response to the District's forfeiture motion in November 1996, and her 7-day requested extension for response to the Motion for Summary Decision on the tenure charges in March 1997, is meritless. (*Id.*) In this regard, respondent initially asserts that the extension granted her to reply to the forfeiture motion was not predicated on a delay under the 120-day rule, as envisioned by statute. (*Id.*) In support of this contention, she notes that, although the within charges were certified to the Commissioner on November 18, 1996, to date, the case has not been transmitted to the Office of Administrative Law (OAL), assigned to a judge or scheduled for hearing. As such, even conceding that she requested and was granted 24 additional days to file a responsive brief to the District's forfeiture

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<sup>4</sup> The relevant portion of this statute specifies "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) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made.\*\*\*"

motion, which motion was ultimately denied by the Commissioner on January 27, 1997, she maintains that all of this time was within the 120-day period of her suspension and, as such, she queries “what was delayed?” “The hearing, which has not been scheduled, could not possibly have been delayed; the 120 day suspension without pay was not affected because the Commissioner’s decision, even with extension, was filed and decided within the 120 day period.” (*Id.* at pp. 3-4) Therefore, she proffers, petitioner’s argument that her salary reinstatement be extended 24 days is insupportable.

Likewise, respondent argues, the “alleged delay,” as a consequence of the 7-day extension for response to the summary decision motion on the charges is also insupportable. (*Id.* at p. 4) Notwithstanding that the extension was granted only under the condition that respondent agree that resumption of her salary be “concomitantly deferred,” she “implicitly agreed to those terms” only because she had no viable option. (*Id.*) Again, she argues, as there is no hearing scheduled, there was no delay. Alternatively, she asserts that if the District is alleging that the “seven day delay” was related to the Commissioner’s ability to decide this matter, this contention is also incorrect, reasoning, in that her 120-day suspension without pay expired on March 18, 1997, and, consequently, any delay must be measured as of March 19, 1997. (*Id.*) As such, respondent argues that she can be charged with a “delay” no greater than five days, *i.e.*, March 19, 1997 to March 24, 1997. (*Id.*)

Respondent, therefore, requests reinstatement to salary status, complete with related emoluments effective March 19, 1997 or, alternatively, if a delay attributable to her is found, *supra*, reinstatement be ordered as of March 24, 1997.

#### State-operated District

In reply, the District urges that, pursuant to *N.J.S.A.* 18A:6-14, it is clear that delays in tenure proceedings which are attributable to respondent are excluded from the period of time for which she is entitled to pay, (District’s Letter Brief in Opposition to Respondent’s

Motion to Return to Active Salary Status as of March 19, 1997, at p. 3) buttressing such assertion with the citation of three Commissioner cases where individuals were not eligible for salary for 17 days, 23 days, and one month under what, it asserts, were similar type circumstances as exist here. It advances that the rationale for such a conclusion is founded on “basic equitable principles.” (See *Ott v. Hamilton Twp. Bd. of Educ.*, 160 N.J. Super. 333 (App. Div. 1978), *cert. den.*, 78 N.J. 336 (1978).) (*Id.* at pp. 3-4)

Here, it proffers, respondent sought and received extensions of 26 days and 7 days, respectively, within which to reply to the District’s motions, for a 33-day total delay attributable to her actions. (*Id.*) It further maintains that issues of whether such delays occurred during respondent’s 120-day suspension period and/or prior to the scheduling of a hearing are of no importance or consequence whatsoever. Therefore, the District reasons that, as respondent is not entitled to salary for this period, it is entitled to extend her 120-day suspension without pay term by these additional days. (*Id.*)<sup>5</sup>

### SUMMARY DECISION MOTION

#### State-operated District

The District advances that the within matter is clearly ripe for summary decision arguing

[s]ummary decision should be granted if the pleadings and affidavits “show that there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5; *Contini v. Bd. of Educ. of Newark*, 286 N.J. Super. 106, 121 (1995). The court must look to the evidentiary materials presented, viewed in a light most favorable to the non-moving party, and determine whether there is sufficient evidence to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. *Id.* at 122 (quoting *Brill v. Guardian Life Ins. Co.*, 142 N.J. 520, 523 (1995)) (District’s Motion for Summary Decision, March 4, 1997, at p. 3)

Here, it proffers, the absence of genuine issues of material fact is fully evident in that respondent’s conduct underlying these charges is undisputed. Respondent, a guidance counselor who possesses

a Master's degree with Ph.D. equivalency, admittedly, knowingly interfered with the conducting of the school election held on April 7, 1992, by going to the polling place where her sister-in-law was working as a challenger with the purpose and intent of "hold[ing] her back, [and] to tell her to ignore" any illegal voting, all in contravention of *N.J.S.A. 18A:14-65* and *N.J.S.A. 2C:2-6*, fully aware that the purpose of this endeavor was to ensure that a particular candidate was elected. (*Id.* at pp. 5-6) It maintains that such behavior on the part of a teaching staff member is unbecoming conduct must be the conclusion of any rational factfinder. (*Id.* at p. 3) Moreover, it observes that the Commissioner has long taken the position that, because of the influential position they occupy, criminal conduct of teachers is particularly egregious. *In the Matter of the Tenure Hearing of Ernest Tordo, School District of the Township of Jackson, 1974 S.L.D. 97, 98-99*, the Commissioner stated

Teachers 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. Pupils learn, therefore, not only what they are taught by the teacher, but what they see, hear, experience, and learn about the teacher. When a teacher deliberately and willfully violates the law, as in this matter, and consequently violates the public trust placed in him, he must expect dismissal or other severe penalty as set by the Commissioner. (*Id.* at pp. 4-5)

Also, particularly disturbing here, the District maintains, is that respondent who, as a guidance counselor, would be expected to "guide young people through decision making processes" rather than "assist[ing] other teachers in the casting of illegal votes," at her sentencing in this matter attempted to justify her criminal behavior by labeling it "poor judgment." (*Id.* at pp. 5-6) It proffers that respondent's behavior clearly transcends mere poor judgment, "[t]his conduct is blatantly and clearly criminal." (*Id.* at p. 6) Even more troubling, it argues, is the fact that respondent, again at her sentencing, demonstrated a "distorted perspective" and a "failure to

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<sup>5</sup> The District's submission reflects that respondent was returned to active salary status as of April 23, 1997, which reflects the additional 33-day delay which it argues herein was attributable to respondent.

understand the enormous impact of her actions” when she was queried by the court as to the effect this matter has had on her students and she responded

They don't seem to be effected (sic) by it. I mean not to me. I don't know what they might say to anybody else but to me personally I don't think they are affected by it. I think some of that may be that they live in an atmosphere of so many bad things that I don't think they look at this in the same way. (District's Motion for Summary Decision at p. 6, quoting Transcript of Sentencing of Terese Capriglione, p. 8, lines 13-18)

It advances that respondent's apparent attitude, evidenced here, is that students who are exposed to wrongdoing on a regular basis become immune to the actions of a lawbreaker. Even accepting that this might be true, it argues, teachers, and especially guidance counselors, have a “heightened responsibility” to serve as role models to these students and to convey the message that, although evidence of wrongdoing may surround them, they all should strive, individually and collectively, to “do the right thing.” (*Id.* at p. 7)

The District next proffers that it is well-established that “unfitness to remain a teacher may be demonstrated by a single incident if sufficiently flagrant, *In re Fulcomer*, 93 *N.J. Super.* 404, 421 (App. Div. 1967) (*id.* at p. 5), particularly when the incident at issue is also a criminal violation and the proffered evidence is a judgment of conviction supplemented by other legally competent proofs such as the indictment, transcripts of the pleas and sentencing and the respondent's own statements as to her culpability, as is the case here. See *In the Matter of the Tenure Hearing of Kenneth Henderek, School District of the Township of East Brunswick*, 94 *N.J.A.R.* 2d (EDU) 268, at 275. See also *Matter of Tanelli*, 194 *N.J. Super.* 492, at 497, 498 (1984). (*Id.*) The District urges that it be granted summary decision as a matter of law in this case as the uncontested proofs advanced clearly constitute sufficient competent evidence to support a finding of conduct unbecoming a teacher warranting respondent's removal from her position.

Respondent

Respondent contends that summary decision is inappropriate here in that there are unresolved factual issues as to whether respondent's guilty plea to a misdemeanor rises to the level of unbecoming conduct. (Respondent's Brief in Opposition to the District's Motion for Summary Decision, March 18, 1997, at p. 7) She further proffers, "even assuming[,] *arguendo*, some degree of conduct unbecoming, genuine issues exist regarding the nature of the penalty, if at all, to be imposed on respondent." (*Id.*) Respondent cites a number of cases decided by the Commissioner for the proposition that the term "unbecoming conduct" is amorphous, having been defined in "various ways" and resulting in varying degrees of penalty after the consideration of all mitigating circumstances. (*Id.* at p. 8) She distinguishes this matter from *Henderek, supra*, relied on by the District for the proposition "that a conviction warrants a termination," reasoning that this consequence occurred only after Henderek had received a full hearing, as required by *N.J.S.A.* 18A:6-10, and his mitigating circumstances were fully presented and considered. (*Id.* at p. 11) Respondent, therefore, advances that, at a very minimum, pursuant to *N.J.S.A.* 18A:6-10, "there *must* be a hearing to determine penalty," where she will be permitted to present witnesses and to enter evidence on her own behalf and for this reason, standing alone, summary decision cannot be granted to the District. (emphasis in text) (*Id.* at p. 12)

#### DETERMINATION

Upon careful review of the record<sup>6</sup> and the advanced arguments of the parties, the Commissioner initially concurs with respondent that, under the circumstances existing in this matter, she was entitled to be returned to active salary status in March 1997. Notwithstanding this conclusion, the Commissioner determines, for the reasons outlined below, that the effective

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<sup>6</sup> It is noted that the District's submissions in this matter include an "Appendix of Evidence" containing Indictment No. 95-09-0308, Superior Court of New Jersey, Essex County, Law Division - Criminal; Judgment of Conviction, Superior Court of New Jersey, Essex County, Law Division - Criminal; Transcript of respondent's Pleas, Superior Court of New Jersey, Essex County, Law Division - Criminal, dated July 15, 1996; and Transcript of respondent's Sentencing, Superior Court of New Jersey, Essex County, Law Division - Criminal, dated September 5, 1996. Also included in the record is a copy of a sworn statement given by respondent to the Essex County Prosecutor's Office on June 26, 1996, with respect to her involvement in this matter.

date of such restoration is March 26, 1997, rather than March 19, 1997 or March 24, 1997, as advanced by respondent.

In his consideration of what appear to be respondent's two primary arguments in support of his motion, the Commissioner is compelled to discount them both. Inasmuch as the two instances of alleged delay occasioned by respondent herein were in connection with the filing of her responses to summary decision motions filed by the District for the Commissioner's consideration, her assertion that, because this case had not been set down for a hearing before an ALJ there was no "delay" in the proceedings, is specious. Likewise, untenable is her apparent contention that the timing of any delay, *i.e.*, whether occurring during the course of or after the expiration of the 120-day time period, has any impact whatsoever on the operation of this statutory provision, as its clear language makes no such distinction.

Irrespective of the dubious nature of respondent's proffered arguments on this issue, the Commissioner cannot concur with the District's position that the two instances of delay which occurred in this matter warrant a 33-day extension of respondent's unpaid suspension, rather, he concludes that only seven days of this period can be charged against respondent's salary entitlement computation, finding that such a result is dictated by the distinguishable nature of the two time periods under review. First, as to respondent's submission in connection with the District's simultaneous filing of tenure charges and its summary decision motion for forfeiture in November 1996, such response, pursuant to *N.J.A.C. 6:24-5.3*, was to be made in accordance with the regulatory provisions specified in *N.J.A.C. 6:24-1.4* which on its face states

Failure to answer within the 20 day period from receipt of service shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.  
(*N.J.A.C. 6:24-1.4(e)*)

Moreover, *N.J.A.C.* 6:24-1.4(a) additionally specifies that “[u]pon written application by a party the Commissioner may extend the time for answer. Such application must be received prior to the expiration of the 20 day period.” Here, while filing her Answer to the tenure charges on November 27, 1996, respondent on December 3, 1996, well within the allotted 20-day due date for her combined submission, requested and was granted a 24-day extension of time within which to reply to the motion portion of the District’s filing, and did so in accordance with such granted extension. In that the applicable regulatory provisions governing this particular submission clearly contemplate the granting of an extension of time within which to file, the Commissioner cannot find justification for terming this granted extension a “delay” within the intendment of the statute and, therefore, ascribing penalty to respondent for this period of time.

On the other hand, the response schedule for the District’s summary decision motion on the charges in March 1997, was established by the March 6, 1997 letter of the Director, Bureau of Controversies and Disputes, rather than by regulation, and unequivocally granted respondent 10 days for her response.<sup>7</sup> Moreover, in reply to her request for extension of this period, respondent was specifically advised that such extension could only be granted with the understanding and agreement that her resumption of salary “shall be concomitantly deferred.”<sup>8</sup> (See Director’s March 14, 1997 letter.) Under these circumstances, respondent cannot now claim absolution from the consequences of the delay she occasioned.

In reviewing the appropriateness of summary decision in this matter, the Commissioner concludes that the District’s motion for a finding of unbecoming conduct must be granted as he finds no outstanding issues of material fact herein and, therefore, the District is entitled to prevail on the truth of its charges as a matter of law. Notwithstanding respondent’s urging to the contrary, the record reveals that her submissions to the record present no issue of

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<sup>7</sup> In that the expiration of this allotted period would occur on a Sunday, respondent’s submission was due on the next business day, March 17, 1997.

<sup>8</sup> This response was filed with the Commissioner on March 24, 1997.

material fact with respect to the conduct underlying her conviction but, rather, in actuality, challenge the conclusions to be drawn from this conduct and its effect on her employment under the tenure laws. As recognized by the Commissioner in *In the Matter of the Tenure Hearing of Andrew Phillips, School District of the Borough of Roselle, Union County*, decided by the Commissioner March 20, 1997, “[i]t is well-established that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case’ *Frank v. Ivy Club*, 120 N.J. 73, 98, citing *Cunningham v. Dept. of Civil Service*, 69 N.J. 13, 24-25 (1975). ‘Moreover, disputes as to the *conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion for summary judgment.*’ *Contini v. Board of Education of Newark*, 96 N.J.A.R. 2d (EDU) 196, 215, citing *Lima & Sons, Inc. v. Borough of Ramsey*, 269 N.J. Super. 469, 478 (App. Div. 1994)\*\*\*.” (emphasis in text) (Slip Opinion at pp. 10-11) Here, respondent engaged in a course of conduct intended to interfere with the conducting of a school election and, subsequently, admitted that she did so knowingly and willingly. The Commissioner determines that respondent’s actions of purposely aiding in the casting of illegal votes is, standing alone, sufficient for the establishment of unbecoming conduct on behalf of a teaching staff member. As such, the Commissioner can find no justification for the expenditure of scarce time and resources to conduct a plenary hearing, as he determines that the undisputed conduct giving rise to respondent’s conviction amply establishes the District’s charges. See *In the Matter of the Tenure Hearing of Robert R. Vitacco, School District of the Borough of Lincoln Park, Morris County*, decided by the Commissioner March 24, 1997.

As to the evaluation/determination of the appropriate penalty to be imposed in this matter, the Commissioner is mindful of the District’s legitimate concern over a situation where tenured teaching staff, who as role models for their pupils and holders of the public trust must be held to the highest standards of good conduct, are known to have been convicted of behavior that is both illegal and, at least facially, connected to their school employment. However, in

considering whether to dismiss an individual from tenured employment, the Commissioner must also consider that individual's prior record in the District, the nature and gravity of her offenses under all the circumstances involved, any evidence as to provocation, extenuation or aggravation and the harm or injurious effect which her conduct may have had in the maintenance of discipline and the proper administration of the school system. *In re Fulcomer*, 93 N.J. Super. 404, 421-22 (App. Div. 1967). Nonetheless, the Commissioner rejects respondent's claim of entitlement to a hearing in order to present such mitigating factors *in person*. He notes that respondent's submission to the record contains her five-page affidavit which specifically addresses her 22 years of successful service in the District and other mitigating factors, and is accompanied by 36 cards and letters of support from friends, colleagues, administrators, parents and students. A review of these comprehensive documents persuades the Commissioner that a hearing for the limited purpose of receiving additional evidence with respect to the assignment or mitigation of penalty is unnecessary, as a personal presentation of the extensive mitigating factors presented would serve to make no appreciable contribution to his consideration of the material.

Although in no way minimizing the extreme seriousness of this offense, the Commissioner, likewise, cannot ignore respondent's successful long history in the District without prior incident and all of the other mitigating factors which she has presented. Also particularly compelling was respondent's detailing of the pressure which she felt was placed on her to cooperate in this matter by persons in positions of influence and her very real fear of serious repercussions which might inure if she refused to do so. In this latter regard, the Commissioner is keenly aware of the deficiencies, irregularities and overall negative atmosphere which existed in the Newark School District at the time of respondent's actions, which situation ultimately necessitated the establishment of a State-operated school district in July 1995. While in no way serving as justification for respondent's criminal conduct, the circumstances under which such conduct occurred cannot be ignored by the Commissioner in determining the appropriate penalty

to be assessed in this matter. Additionally, the Commissioner notes that the Superior Court of New Jersey, Essex County, Law Division, Criminal, having considered respondent's presentencing report and mitigating circumstances, imposed a penalty of two year's probation, \$500 fine, \$50 VCCB and 120 hours of community service, under a statute which permitted imprisonment.

Having considered the within charges and all of the remaining factors, therefore, the Commissioner concludes that respondent's conduct, although egregious and unprofessional, does not, *based upon the unique circumstances existing in this matter*, warrant her dismissal from her tenured position. Notwithstanding, he finds it necessary and appropriate to impress upon this respondent and other individuals, through imposition of a very substantial penalty, the seriousness of such conduct and the degree to which it will not be tolerated in the school environment.

Accordingly, the Commissioner directs that respondent shall not be dismissed from her tenured position, but shall, in light of the unbecoming conduct at issue herein, suffer a seven-month unpaid suspension, which period shall include the 120-day unpaid suspension already served, as well as forfeiture of her employment and adjustment increments for the 1998-99 and 1999-2000 school years.<sup>9</sup> Additionally, a copy of this decision is hereby forwarded to the State Board of Examiners, which body the Commissioner notes is currently considering action against respondent's certificate based on the criminal conduct underlying the instant matter. As such, the Commissioner directs that the within penalty be *in addition* to any suspension which the Board of Examiners may ultimately choose to impose.<sup>10</sup>

IT IS SO ORDERED.

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<sup>9</sup> This penalty is the most severe penalty the Commissioner has ever imposed short of dismissal.

<sup>10</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.

COMMISSIONER OF EDUCATION

April 22, 1998