

IN THE MATTER OF THE TENURE :
HEARING OF GREGORY PALUMBO, :
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 teaching staff member based on his having pled guilty to Disturbing Results of an Election, in violation of *N.J.S.A. 18A:14-65*, wherein he 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. Respondent submitted Motion to Dismiss based on procedural defects.

Commissioner denied respondent's Motion to Dismiss, determining that defects herein were technical and insubstantial in nature and insufficient to render the process unfair. 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 his dismissal from his tenured position. Commissioner ordered respondent to suffer a seven-month unpaid suspension, which period shall include the 120-day unpaid suspension already served, and noting that respondent's certificate was currently suspended, pursuant to a separate State Board of Examiners action, until October 9, 1998, the remaining portion of the within suspension would commence upon his eligibility to return to certificated employment. Commissioner additionally directed that respondent forfeit his increments for the 1998-99 and 1999-2000 school years.

April 22, 1998

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For Petitioner, Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
(Cherie L. Maxwell, Esq.)

For Respondent, Eugene G. Liss, 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.¹ 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 his guilty plea to Disturbing Results of an Election, in violation of *N.J.S.A. 18A:14-65*, wherein he 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

¹ 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.

days within which to file an answer to the tenure charges and the motion for summary decision, and such submission was made by respondent on December 13, 1997.² 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 his removal from the District.³ On March 24, 1997, respondent filed a reply to the District's motion for summary decision, and contemporaneously submitted a motion to dismiss. By letter dated March 25, 1997, the District was afforded 10 days to reply to respondent's motion and respondent, upon his receipt of any filing made by the District was

² By letter dated December 20, 1996, the District attempted to file a reply to respondent's brief in opposition to the motion for summary decision. It was notified that, as there was no provision made for any submission beyond an answer and a reply in the Director's November 21, 1996 letter, this submission and any response thereto which might subsequently be submitted, would not be considered in these proceedings.

³ In a letter dated March 13, 1997, respondent challenged the Commissioner's authority to entertain a motion for summary decision. He contends that, pursuant to *N.J.A.C. 1:1-12.1 et seq.*, when a case has not yet been assigned to a judge, motions may be filed with the Clerk. He maintains that there is nothing in the regulations which permit the Commissioner to entertain a motion for summary decision and, therefore, this 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.

accorded five days within which to reply to such filing. The District's response to respondent's motion was filed on April 8, 1997, with no reply being filed by respondent.⁴

BACKGROUND

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

On or about April 7, 1992, Gregory Palumbo, a tenured teacher employed by the Newark School District, repeatedly cast illegal votes and assisted others in the casting of illegal votes in the school board election. By his own admission, he went inside the polling place and forged the names of voters on the voting list. See Appendix of Evidence, Transcript of Plea, p. 11, lines 11-14. Mr. Palumbo acknowledges that he personally forged the names of at least one hundred twenty-eight (128) individuals. *Id.* at p. 11, lines 12-14. He further acknowledges that he tripped the voting lever and voted for people who were not there. *Id.* at p. 10, lines 1-3. This resulted in one hundred twenty-eight (128) fraudulent votes being cast. *Id.* at p. 11, lines 14-16. By his own admission, he observed others participating in this fraudulent, illegal, criminal conduct. *Id.* at p. 11, lines 20-25. He was aware that the purpose of this conduct was to cast illegal votes and secure the election of certain individuals to the school board. By his own admission, he was guilty of disturbing the results of an election. *Id.* at p. 10, lines 15-19.

As a result of the behavior described above, Mr. Palumbo was accused of Disturbing Results of an Election (*N.J.S.A. 2C:2-6; N.J.S.A. 18A:14-65*) ***. See Appendix of Evidence 1.

Mr. Palumbo waived indictment and subsequently pled guilty to an accusation of violations of *N.J.S.A. 18A:14-65; N.J.S.A. 2C:2-6*. See Appendix of Evidence 2 & 3. The

⁴ On April 25, 1997, respondent filed a motion to return him to active salary status as of March 26, 1997. Such motion was subsequently withdrawn pursuant to respondent's letter dated May 9, 1997, which indicated that this issue had been satisfactorily resolved by the parties.

accusation states that Mr. Palumbo 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. See Appendix of Evidence 1.

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

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

On November 21, 1996, the State-Operated District of Newark certified the instant tenure charges to the Commissioner.

POSITION OF THE PARTIES

MOTION TO DISMISS

Respondent

Respondent argues that this matter should be dismissed because of the District's failure to comply with *N.J.S.A.* 18A:6-11 and *N.J.A.C.* 6:24-5.1 in the service of the within tenure charges. In this regard, he states that the District originally filed tenure charges against him on or about October 17, 1996; he filed a response to such charges on or about October 31, 1996; and on or about November 8, 1996, he received the Certificate of Determination on these charges. (Respondent's Brief in Support of Motion to Dismiss and in Opposition to Petitioner's Motion for Summary Judgment, at p. 3) Respondent avers that on or about November 20, 1996, the District withdrew these charges and refiled new charges against him, accompanied by a new Certificate of Determination. He states that, although his attorney received the new charges, he, personally, "was never notified of the charges or given the opportunity to respond," in contravention of

N.J.S.A. 18A:6-11. (*Id.*) Respondent further contends that *N.J.A.C.* 6:24-5.1, which dictates the procedures to be utilized in *all* instances of the filing and certification of tenure charges, requires service of such charges upon the affected employee and that proof of this service accompany the filing. (*Id.*) Moreover, respondent asserts that the District's failure to follow required procedures is not a merely a technical or insubstantial defect. In support of this assertion, respondent cites *In the Matter of the Tenure Hearing of Carol Beam*, 93 *N.J.A.R.* 2d (EDU) 320 where, in reviewing procedural and technical errors by school districts, the court stated

Dismissal of tenure charges is not required for technical, insubstantial failure to follow *N.J.S.A.* 18A:6-10 to 14. The Appellate Division has distinguished the significance of various technical violations in *In the Matter of the Tenure Hearing of Cowan*, 224 *N.J. Super.* 737 (App. Div. 1988). Many are simply insufficient to render the process unfair and contrary to the statutory intendment.... On the other hand, a failure to give a teacher the time to answer and a board's failure to act roughly within 45 days, plus 15 days to respond are fatal defects.
(*Id.* at p. 5)

Therefore, respondent maintains that the District's failure to provide him time to answer the newly filed charges, instead just resubmitting the withdrawn charges along with his answer to those charges, its submission of a new determination, and its failure to serve him with the new charges, personally or by certified mail, as mandated by statute and regulation, clearly evidences a fatal defect necessitating dismissal of these charges.

State-operated District

In response, the District urges that respondent's argument that failure to deliver the within charges to him *directly* is a fatal flaw obliging dismissal of the charges, "exalts form over substance." (District's Brief in Response to Respondent's Motion to Dismiss and to Respondent's Opposition to Petitioner's Motion for Summary Decision, at p. 2) It advances that

respondent, admittedly, was personally served with the first set of tenure charges filed which, subsequently, were withdrawn due to a technical error having no impact whatsoever on the charges, and replaced by the filing of “identical charges” which were served on respondent through his attorney, who had entered an appearance on his behalf in this matter. (*Id.*) Moreover, the District points out that, notwithstanding respondent’s current argument, he “*answered* the charges which he now claims should be dismissed for lack of personal jurisdiction and notice.” (emphasis in text) (*Id.*) The District further urges that at no time prior to the filing of his motion did respondent advance a defense of “lack of service” nor did he indicate that his attorney would not accept service on his behalf. (*Id.*) As such, the District contends that service upon respondent through his attorney, rather than directly to him, is no more than a technical violation, which did not in any way prejudice respondent in this matter. (*Id.* at p. 3)

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. He has admitted fraudulently casting illegal votes

by forging the names of at least 128 voters, pulling the lever to cast the votes and assisting other teachers in the casting of illegal votes in the school election held on April 7, 1992, all in contravention of *N.J.S.A.* 18A:14-65 and *N.J.S.A.* 2C:2-6. (*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.*) 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 *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 violate 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)

The District further urges 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 accusation, transcripts of the plea and sentencing and the respondent’s own statements as to his 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, Middlesex County*, 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.* at p. 5) 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 his position.

Respondent

Respondent argues that the applicable statutes in this matter do not permit summary judgment in a tenure hearing, and alleges that the District's reliance on *Contini, supra.* is inappropriate here. He maintains that the applicable statutory provision which governed the *Contini* matter, *N.J.S.A.* 18A:7A-15, specifically contemplates the possibility of summary decision in that it states "upon its determining that the school district is not providing a thorough and efficient system of education, the State board may direct the removal of the district board of education and the creation of a State-operated school district." (Respondent's Motion to Dismiss and Response to Petitioner's Motion for Summary Judgment, at pp. 6-7) Respondent contends that statutes governing tenure, *N.J.S.A.* 18A:28-5 and *N.J.S.A.* 18A:6-16, on the other hand, "do not call for the immediate 'per se' dismissal of school teachers for unbecoming conduct/commission of a crime." (*Id.* at p. 7) Rather, he asserts that *N.J.S.A.* 18A:6-16 specifically directs that he is entitled to a hearing on the tenure charges, the "pivotal words of the statute [being] that the Commissioner shall 'conduct a hearing' on the charge and 'render a decision.'" (*Id.*)

Respondent further advances that the Commissioner has previously commented on cases similar to his matter herein, stating

The Commissioner thus concludes that in the tenure matter where a respondent has been convicted of an indictable offense(s), which forms the basis for the certification of tenure charges, no obligation exists to retry such individual's guilt. The doctrines of *res judicata* and collateral estoppel bar relitigation of such conviction.

However, a review of the legal documents related to such conviction and the taking of testimony in consideration of mitigation circumstances surrounding the fact underlying any such conviction is acceptable and consistent with law.

(Respondent's Motion to Dismiss and Response to Petitioner's Motion for Summary Judgment, at p. 8)

As such, respondent maintains that, notwithstanding whether the District establishes that his conduct rises to the level of unbecoming conduct as a matter of law, because issues of fact remain with respect to an appropriate penalty, he "is entitled to a hearing and the opportunity to supply witnesses, additional evidence, and to present mitigating factors in person." (*Id.* at p. 9) Respondent "demands that he be given a tenure hearing as a matter of law[,] [as t]here is no jurisdiction for an Administrative Law Judge or the Commissioner of Education to grant automatic dismissals in a tenure hearing without the consideration of mitigating factors and a hearing thereon." (*Id.*)

DETERMINATION

Upon careful review of the record⁵ and arguments of the parties advanced in this matter, the Commissioner initially denies respondent's Motion to Dismiss the within tenure charges predicated upon the assertion that the District's service of the charges in this matter upon his attorney, rather than on him personally, is violative of the requirements of *N.J.S.A.* 18A:6-11 and *N.J.A.C.* 6:24-5.1, and that this, along with the District's failure to provide him an opportunity to answer these charges, are fatal defects necessitating dismissal of the charges. The

⁵ It is noted that the District's submissions in this matter include an "Appendix of Evidence" containing Accusation #95-7-1203, Superior Court of New Jersey, Essex County, Law Division - Criminal; Waiver of Indictment and Trial by Jury, Accusation #95-7-1203, 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 Plea, Superior Court of New Jersey, Essex County, Law Division - Criminal, dated July 28, 1995; and Transcript of respondent's Sentencing, Superior Court of New Jersey, Essex County, Law Division - Criminal, dated August 31, 1995. Also included in these materials is a Transcript of Sentencing of another individual involved in the election fraud incidents. The Commissioner finds that this document is not germane to the instant matter and it was, therefore, not considered in reaching the determination herein.

Commissioner determines that such defects, under the particular circumstances existing in this matter, are “technical and insubstantial” in nature and are “simply insufficient to render the process unfair and contrary to statutory intendments.” *Beam, supra*, at 321.

In this regard, the Commissioner observes that the procedures outlined by statute and regulation are clearly designed to protect the rights of tenured employees when tenure charges against them, seeking their dismissal or reduction in salary, are undertaken, and are intended to insure that notions of due process and fundamental fairness are observed in this process. Moreover, it is well-established that the Commissioner will not automatically dismiss tenure charges on procedural grounds and has declined to do so where the defect at issue did not, under the particular circumstances, prejudice a respondent’s rights or represent an egregious and unwarranted disregard of tenure proceeding law. See *In the Matter of the Tenure Hearing of James Andrews, School District of the City of Newark, Essex County*, 1991 S.L.D. 1286; *In the Matter of the Tenure Hearing of Thomas Puryear, School District of the City of Newark, Essex County*, 1977 S.L.D. 934; *In the Matter of the Tenure Hearing of Eddie Lee Harrell, School District of the City of Paterson, Passaic County*, decided by the Commissioner August 30, 1985. Under the totality of the circumstances presented in the instant matter, the Commissioner cannot conclude that the procedural defects at issue can reasonably be termed to have substantially violated these statutory and regulatory mandates and intendments. Specifically, respondent’s own submission herein confirms the sequence of events which occurred in this matter. On or about October 17, 1996, he was personally served with tenure charges of unbecoming conduct by the District and on or about October 31, 1996 respondent, through his attorney, filed his answer to such charges. Thereafter, on or about November 8, 1996, the charges were certified to the Commissioner. (Respondent’s Motion to Dismiss and Response to Petitioner’s Motion for

Summary Judgment, at p. 3) The Commissioner observes that shortly thereafter, by letter dated November 20, 1996, the District withdrew these charges, due to what it, uncontrovertedly, asserted was a “technical error which in no way affected the charges,” (District’s Response to Respondent’s Motion to Dismiss, at p. 2) and *simultaneously* replaced them with an *identical* set of charges, serving respondent’s attorney of record with a full copy of this entire submission. As such, given that respondent was, in fact, served with and answered the District’s tenure charges, the Commissioner concludes that respondent cannot credibly claim that his rights were prejudiced by the District’s failure to personally serve him or provide him an opportunity to answer the identical in content substituted charges.

In reviewing the appropriateness of summary decision in this matter, the Commissioner concludes that the District’s motion 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 his submissions to the record present no issue of material fact with respect to the conduct underlying his conviction but, rather, in actuality, challenge the conclusions to be drawn from this conduct and its effect on his 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 he did so knowingly and willingly. The Commissioner determines that respondent’s actions of fraudulently casting and aiding others in the casting of illegal votes are, 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 rejects respondent’s arguments that he is necessarily entitled to a hearing in this matter in order to present mitigating factors *in person*. The Commissioner notes that respondent’s submission with respect to the issue of penalty specifically “relies on [his] attached affidavit***as to mitigating factors of his conduct.” (See Respondent’s Motion to Dismiss and Response to Petitioner’s Motion for Summary Decision, at p. 9.) A review of this comprehensive, six-page affidavit 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.

In making his assessment of an appropriate penalty 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 his offenses under all the circumstances involved, any evidence as to provocation, extenuation or aggravation and the degree of harm or injurious effect which his 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. 1976).

In the instant matter, while in no way minimizing the extreme seriousness of respondent's offense, the Commissioner cannot ignore respondent's long and successful employment history in the District, his lack of prior incident or discipline, his full cooperation with all investigating authorities in the underlying criminal matter, and his attempts to minimize deleterious consequences of his actions on students, supervisors and co-workers upon his return to work following conviction, which predated the instant tenure charges by nearly a year and which resulted in positive performance evaluations. Neither can the Commissioner ignore the pressure which respondent felt was brought to bear upon him to engage in his wrongful behavior, in that he was led to believe, by persons including his supervising officials, that not only his job but also his personal physical safety would be in jeopardy if he failed to honor the well-established expectation of staff cooperation in suspect election activities. 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 assessing 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 one year's probation and a \$375 fine under a statute which permitted imprisonment. Similarly, the State Board of Examiners, upon consideration of respondent's conduct, elected to suspend his certificate for one year rather than to revoke it. *In the Matter of the Licenses of Gregory Palumbo*, decided by the State Board of Examiners October 9, 1997.

Having considered the proven 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 his dismissal from his 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 the respondent shall not be dismissed from his 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, said suspension to commence upon his eligibility to return to certificated employment on October 9, 1998, as well as forfeiture of his employment and adjustment increments for 1998-99 and 1999-2000 school years.⁶ The State Board of Examiners having already considered and

⁶ It is noted that this penalty is the most severe penalty he has ever imposed short of dismissal.

taken action against respondent's certificate based on the conduct underlying the charges herein, a copy of this decision shall be forwarded to the Board for informational purposes only.⁷

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

April 22, 1998

⁷ 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.