

IN THE MATTER OF THE TENURE :
HEARING OF KATHLEEN STARLING, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
CITY OF LINDEN, UNION COUNTY. :
_____:

SYNOPSIS

Board certified tenure charges of unbecoming conduct against respondent teacher, alleging that she physically assaulted a sixth grade student.

ALJ found that respondent engaged in conduct unbecoming and that although respondent did not intend to inflict bodily harm during the altercation, her physical actions did exceed an attempt at restraint and, thus, were inappropriate and manifested poor judgment. ALJ concluded respondent's conduct did not warrant dismissal, as her actions were spontaneous, rather than premeditated. ALJ ordered respondent be continued in her tenured status, that she forfeit 120 days' pay already withheld, and that she be denied any salary and adjustment increments for which she would have been eligible since the date of suspension. ALJ further ordered attendance at a certified course on crisis management/classroom control prior to returning to the classroom.

Commissioner adopted initial decision as his own. Commissioner, however, recognized that he may not require respondent, as a portion of her penalty, to attend a training program, but he did urge the Board to consider, at its discretion, requiring respondent's involvement in such a program. (*DiPillo*)

JUNE 15, 1998

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Both respondent's and the Board's exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4.

In its exceptions, the Board first clarifies that its witness, Jackie Prigge, is a classroom aide, rather than a teacher. (Board's Exceptions at p. 1) Next, the Board objects to the *de minimus* nature of the penalty imposed by the Administrative Law Judge (ALJ), maintaining that respondent should forfeit her tenure. Finally, the Board seeks clarification as to the course in crisis management/classroom control ordered by the ALJ to be taken by respondent, in that

***there is no time frame delineated during which the teacher shall take such a course and if she were to delay taking such a course, it appears that the Board of Education would still be paying her salary until she decided to take such course, or until such time that the course became available. (*Id.* at p. 2)

Respondent's exceptions also seek clarification; respondent questions whether the ALJ intended to deny her adjustment increments through the remainder of her employment, or whether the ALJ ordered that she be denied the increments she would have received from the date

of her suspension, through the date she returns to work, as a result of this decision. Should the ALJ's intent be the former, respondent argues that such a penalty "would be excessive and disproportionate to the alleged wrong doing ***." (Respondent's Exceptions at p. 2)

Upon careful and independent review, the Commissioner determines to affirm the initial decision of the ALJ finding that respondent was guilty of conduct unbecoming a teaching staff member. The Commissioner further accepts the ALJ's recommendation as to the appropriate penalty in this matter, mindful of the fact that respondent was assaulted by a student, but no less cognizant that respondent, notwithstanding that she may have intended no harm (initial decision at p. 7), used excessive force in attempting to restrain her attacker. (*Id.*)

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. It is ordered that respondent forfeit the 120 days salary already withheld, and that she be denied any salary increments for which she may have been eligible during the pendency of this proceeding. However, with respect to the recommended course in crisis management/classroom control, the Commissioner recognizes that he may not require respondent, as a portion of her penalty, to attend a training program, *In the Matter of the Tenure Hearing of Mary Ellen DiPillo, School District of the Township of Randolph, Morris County, 95 N.J.A.R. (EDU) 206, 208*, but nevertheless urges the Board to consider, at its discretion, requiring respondent's involvement in such a program.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

* 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.

JUNE 15, 1998