

IN THE MATTER OF THE :
TENURE HEARING OF :
BRIAN YATAURO, SCHOOL : COMMISSIONER OF EDUCATION
DISTRICT OF THE TOWNSHIP : DECISION
OF LACEY, OCEAN COUNTY. :
_____ :

SYNOPSIS

Board certified tenure charges of unbecoming conduct, insubordination and other just cause against respondent high school band director and music teacher due to his allegedly improper relationship with E.K., a teenage student and musician/band member, and to his failure to comply with directives issued to him to avoid contact with students after his suspension.

In light of the credible testimony of E.K., as well as the supporting testimony of her mother and her friends and the evidence in the record, the ALJ found by a preponderance of the credible evidence that respondent did engage in sexual conduct with E.K. ALJ concluded that respondent acted in disregard of the standards of professional conduct expected of public school teachers, as well as the policies of his employer. ALJ ordered respondent removed from his tenured position.

Commissioner adopted findings and determination in initial decision as his own. Commissioner concurred with the ALJ that the Board established its charges of unbecoming conduct against respondent by a preponderance of the credible evidence necessitating his removal from his tenured position. Commissioner ordered him dismissed as of the date of this decision and the tenure matter transmitted to the State Board of Examiners for action, as that body deems appropriate. Commissioner directed the issue of moneys which may be due and owing respondent be severed from the tenure matter herein and this sole issue remanded to the OAL for necessary determinations consistent with the ALJ's request.

March 1, 1999

OAL DKT. NO. EDU 08619-97S
AGENCY DKT. NO. 347-9/97

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties. On January 26, 1999, a letter was received from Administrative Law Judge (ALJ) Jeff S. Masin requesting that, subsequent to the Commissioner's determination of the within tenure charges, this case be remanded to him solely on the outstanding issues of back pay and moneys that the respondent claims for the period following his acquittal of criminal prosecution and money that was withheld following his suspension. ALJ Masin states that he will issue a separate initial decision on these monetary claims.

Upon a thorough and independent review of the record in this matter¹, the Commissioner affirms the determination of the ALJ, for the reasons very well expressed in the initial decision, that the Board has established its charges of unbecoming conduct against respondent by a preponderance of the credible evidence necessitating his removal from his tenured position.

¹It is noted that the within record did not include transcripts of the 13 days of hearing conducted at the OAL.

Accordingly, the Commissioner adopts the recommended decision of the OAL and hereby orders that Brian Yatauro be dismissed from his tenured position with the Board of Education of the Township of Lacey as of the date of this decision. The Commissioner further directs that the issue of moneys which may be due and owing respondent in this case be severed from the tenure matter herein and this sole issue be remanded to the OAL for necessary determinations consistent with the request of the ALJ. The tenure matter will be transmitted to the State Board of Examiners, pursuant to *N.J.A.C. 6:11-3.6*, for action, as that body deems appropriate, against respondent's teaching certificate.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 1, 1999

² 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.