243-00

IN THE MATTER OF THE TENURE	:
HEARING OF HENRY KOMOROWSKI,	: COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT	: DECISION
OF THE CITY OF JERSEY CITY,	:
HUDSON COUNTY.	:

SYNOPSIS

Petitioning District certified tenure charges of unbecoming conduct against respondent teacher. The District sought respondent's dismissal from his teaching position, alleging that respondent engaged in a series of discussions with students in his fifth-grade Gifted and Talented technology course, at the beginning of several classes, concerning methods of torturing and killing student L.S. The District also alleged that respondent brought to school a document showing how to purchase guns over the Internet.

The ALJ determined that the District substantiated Charges 1 through 10, and, in part, Charge 11. The ALJ concluded that respondent had, on several occasions during class time, engaged in discussions with students of methods of torturing and killing student L.S. The ALJ also determined that respondent had brought an advertisement selling guns to school and showed it to an administrator. The ALJ concluded that such conduct encouraged an environment in which violence was considered acceptable and fostered a moral climate of disrespect for life and bodily integrity. The ALJ recommended a penalty of dismissal, noting that, while respondent did not intend to harm L.S. or incite violence among his students, his conduct in condoning and directing the discussions of violence evidenced a lack of necessary self-control and restraint mandated by his position.

The Commissioner affirmed the decision of the ALJ, concurring that respondent "breached his responsibilities as a teacher and engaged in conduct unbecoming a professional teaching staff member." The Commissioner ordered respondent dismissed from his tenured teaching position as of the date of this decision and directed a copy of this decision be forwarded to the State Board of Examiners for action as it deems appropriate.

July 27, 2000

OAL DKT. NO. EDU 9993-99
AGENCY DKT. NO. 275-9/99

IN THE MATTER OF THE TENURE	:
HEARING OF HENRY KOMOROWSKI,	: COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT	: DECISION
OF THE CITY OF JERSEY CITY,	:
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions and the District's reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.

The entirety of respondent's exceptions contend that the District "failed utterly" to meet its burden of proving respondent was guilty of unbecoming conduct. (Respondent's Exceptions at 1) To this end, respondent sets forth the following seven exceptions: 1) the ALJ selectively presented her summary of evidence in a manner biased to him; 2) the ALJ's finding of fact that he participated in discussions about ways of killing L.S. by cutting his body apart with a saw, shooting him with a gun, using a flamethrower, sticking a sword to him, guillotining him, drawing and quartering him and clubbing him to death is not based on the record below; 3) the ALJ incorrectly found that the District sustained charges three and four; 4) the ALJ failed to consider both the content of the guillotine discussion and the context in which it occurred; 5) the ALJ failed to consider both the content of the bleach discussion and the context in which it occurred; 6) the ALJ's conclusion that respondent "demonstrated a callous indifference to the health, welfare and safety of his students" (*id.* at 16) is not based on the record below and,

moreover, contradicts her own findings; and 7) the ALJ's recommendation of dismissal is inconsistent with both the alleged harm and relevant case law.

As to his final point, respondent notes that there has been no finding of harm to L.S. He compares this case to *In re Tenure Hearing of Ribacka, School District of Sussex-Wantage Regional*, 1978 *S.L.D.* 929, wherein, despite extensive testimony from persons who witnessed respondent's alleged mentally and physically harassing conduct and its effects upon a student, the tenure charge was dismissed, and notes the differing result that was reached by the ALJ herein despite what respondent perceives as a lack of necessary proofs. (*Id.* at 19) Respondent advances that in another similar case, *In re Tenure Hearing of Demarco, School District of Glassboro,* 1980 *S.L.D.* 204, notwithstanding a finding from the hearing examiner that the respondent therein had actually threatened the student with bodily harm, the Commissioner found that removal was too harsh a penalty. (Respondent's Exceptions at 19-20)

By contrast, respondent maintains that, here, the ALJ ignored the facts, disregarded his teaching ability and his record in the District, and arrived at an unduly harsh conclusion. Based on his strong reputation as a teacher and his unblemished record, and in recognition of the fact that the District did not bring a single witness who had *actual* knowledge of the frequency, duration, content or context of any of the discussions that occurred, respondent urges the Commissioner to recognize that the District has not proven its charges "let alone that the conduct alleged is so serious, or that there are any aggravating circumstances, that would warrant [his] *** dismissal." (*Id.* at 25)

In reply, the District counters that: 1) there is ample evidence in the record to support the ALJ's findings that respondent participated in the discussions, as found, and he also, at times, initiated the discussions, and did not stop them when they "were taking place among the

boys but joined in the discussion and redirected their attention to other violent conduct such as beheading the particular student by guillotine" (Petitioner's Reply Exceptions at 8); 2) the ALJ's presentation of the testimony was not biased -- rather her presentation of the evidence suggests that she did not find respondent's explanations credible or sensible. (*ibid.*); 3) contrary to respondent's contention that there was no testimony that any student found the discussions to be harmful or objectionable, Ms. Frierson-Howard testified that L.S. told her that he was upset when respondent "spoke to him personally in class and mentioned taking his limbs, attaching them to four horses and beating the horses," (*id.* at 11-12); and 4) the recommended penalty of dismissal is warranted.

With respect to penalty, the District distinguishes *Ribacka, supra*, and *Demarco, supra*, from the within matter. In the former, the District argues, the board had not proven any improper conduct so as to warrant a penalty. In the latter, although the Commissioner affirmed that the teacher had made a threat against a student using profane and vulgar language, he also noted that the single incident took place while on a ski trip, a less structured setting than the classroom. Additionally, in *Demarco*, the students were 14 or 15 years of age. (*Id.* at 12-13)

The District asserts that:

> [t]he unbecoming conduct of respondent Komorowski in this case did not take place *** at an unstructured extra-curricular activity outside the classroom[,] nor did it consist of a single incident. Indeed, the respondent's conduct is far more similar to [that in *IMO Tenure Hearing of Zielenski*, 1977 *S.L.D.* 786] *** where the teacher was removed for using profanity in class when a student was late in handing in an assignment (citation omitted) and for maintaining classes in an inefficient and "careless, defiant and indifferent manner," (citation omitted). The Commissioner found that Zielenski had used profanity "which was heard by other pupils in the classroom," (citation omitted), and which "constituted gross misconduct" demonstrating "respondent's disregard for her professional responsibilities and public trust," (citation omitted).*** (*Id.* at 13)

The District underscores that, by respondent's own admissions and statements, the discussions herein took place every other week, and were sometimes initiated by him, in his classroom, with students who were approximately ten years old. (*Id.* at 14)

Similarly, the District advances that respondent's dismissal is consistent with a line of cases where teachers have been dismissed for grave failure to exercise proper care and control of the classroom. (*See*, Petitioner's Exceptions at 14-15, citing *In the Matter of the Tenure Hearing of Sheridan,* 92 *N.J.A.R.* 2d (EDU) 257 (1992); *Morris School District v. Brady*, 92 *N.J.A.R.* 2d (EDU) 410 (1992); *Board of Education of Princeton Regional Sch. Dist. v. Campbell*, 93 *N.J.A.R.* 2d (EDU) 196, *aff'd* 93 *N.J.A.R.* 2d. (EDU) 604 (1993), *aff'd* 95 *N.J.A.R.* 2d (EDU) 211 (App. Div. 1995); and *Flemington-Raritan Regional School Dist. v. Van Gilson*, 93 *N.J.A.R.* 2d (EDU) 378 (1993). The District then concludes that respondent's unblemished record and supportive testimony from supervisory and administrative staff should be viewed in light of his relatively short service in the District, and urges the Commissioner to adopt the Initial Decision of the ALJ recommending respondent's dismissal.

Upon careful and independent review of the record in this matter, which included transcripts from the hearing conducted on January 19, January 20 and February 4, 2000, the Commissioner affirms the recommended decision of the ALJ. The Commissioner concurs that the District has established charges 1, 2[1], 3[2], 4[3], 5, 6, 7, 8, 9 and 10 by a preponderance of

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[1] The Commissioner notes that the first two "charges" are actually statements of fact.

[2] Respondent disputes that he participated in the discussions noted in the third charge. Based on his review, the Commissioner finds that the record supports the conclusion that, although respondent's students initiated a number of the conversations referenced therein (*i.e*., killing L.S. by utilizing a flame thrower, by clubbing him to death, with a sword, and with an ax; *see* Tr.(1/20/00) at 67 - 68), *respondent himself* introduced the idea of dissolving L.S. in a vat of bleach (*id.* at 59), killing L.S. by guillotine (*id.* at 66) and drawing and quartering him (*id.* at 66-67), notwithstanding his contention that these comments were made within the context of "a lesson." Further, although respondent asserts that he attempted to stop these conversations when initiated by students in his class (*id.* at 68), the Commissioner is not so persuaded that respondent in fact attempted to do so. Had respondent been conscientious about deterring such discussions, he would not, have used L.S. as an "example" in *his* classroom lessons.

credible evidence. Like the ALJ, the Commissioner determines to sustain charge 11, in part, since the District has failed to establish that the gun advertisement which respondent obtained from the Internet was distributed to *any* students. Rather, as the record makes clear, respondent brought the advertisement to Ms. Frierson-Howard, who testified that she threw it away. (Tr. (1/19/00) at 34-35) Therefore, the Commissioner cannot attribute to respondent any deleterious effects of the advertisement on students. Neither does the District present any evidence to contradict respondent's testimony concerning his intended use for the advertisement.[4]

Nonetheless, the Commissioner finds that the record supports the ALJ's findings, including her observation that respondent has no "clue that [his pattern of irresponsible and insensitive utterances] *** and discussions could be psychologically and emotionally harmful to young and impressionable students." (Initial Decision at 13) Therefore, like the ALJ, the Commissioner concludes that respondent "has breached his responsibilities as a teacher and engaged in conduct unbecoming a professional teaching staff member." (Initial Decision at 13) For the reasons set forth in the initial decision, the Commissioner concurs that dismissal is the appropriate penalty in this matter.

Accordingly, the Initial Decision of the ALJ is adopted as set forth herein. Respondent is hereby dismissed from his tenured position as a teacher in the State-operated School District of the City of Jersey City as of the date of this decision. A copy of this decision shall be forwarded to the State Board of Examiners for action as it deems appropriate.

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[3] The Commissioner finds that, although the record does not confirm the length of time these discussions took place, it *does* support the conclusion that they were held in the beginning of class and that they continued periodically throughout the semester.

[4] Having so found essentially eviscerates the effect on the penalty imposed herein of Charge 9, although sustained, which states: "Mr. Komorowski has also produced a document showing how to purchase guns over the Internet. Mr. Komorowski's students have access to computers and the Internet. Mr. Komorowski produced the gun advertisement at P.S. 27 during the week of April 26, after spring break and after the gun killings at Columbine High School in Littleton, Colorado, on April 20, 1999, which made national news." (Initial Decision at 3)

IT IS SO ORDERED.[5]

COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2000

Date of Mailing: July 27, 2000

[5] This decision, as the Commissioner's final determination, 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.