

IN THE MATTER OF THE TENURE :
HEARING OF GEORGE ZOFCHAK, :
SCHOOL DISTRICT OF THE : COMMISSIONER OF EDUCATION
CITY OF TRENTON, MERCER : DECISION
COUNTY. :

SYNOPSIS

The Board certified tenure charges of conduct unbecoming a teacher, insubordination and other just cause against teaching staff member for allegedly making defamatory statements to his students, leaving his classroom unsupervised and having classroom control problems.

In light of the record and the testimony of witnesses, the ALJ found that respondent was guilty of negligent instruction (Charge One), guilty of making defamatory statements to/about students (Charge Two), guilty of poor classroom management (Charge Four), guilty of unprofessional conduct/insubordination (Charge Five) and guilty of conduct unbecoming a teacher and insubordination or other just cause (Charge Six). The ALJ concluded that respondent's consistent and continuous failure to teach his students effectively warranted his removal from the classroom. Thus, the ALJ ordered his removal as a teaching staff member in the District.

The Commissioner modified the Initial Decision. The Commissioner noted that the Board did not comply with the procedural requirements set forth for bringing inefficiency charges and the record contained only one documented classroom observation of respondent. The Commissioner, however, found it unnecessary to determine whether the instructional and classroom management deficiencies alleged by the Board, although sounding in inefficiency, would constitute unbecoming conduct pursuant to *Loria* and *Driscoll*. Based on the totality of the record before him, the Commissioner, nevertheless, concluded that the charges and proofs established in the record reflected a pattern of professionally unacceptable conduct which cannot be tolerated in a school setting and comprised a "series of incidents" warranting loss of respondent's tenured position. (*Redcay*) The Commissioner ordered respondent dismissed from his tenured position as of the date of this decision and referred the matter to the State Board of Examiners for action against his certificate as it deems appropriate.

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| <p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
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October 15, 2002

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent’s exceptions and the Board’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.

In his exceptions, respondent continues to assert that Charge One, alleging “negligent instruction,” should be dismissed, in that the specifications therein sound in inefficiency and it is undisputed that the Board did not provide him with the requisite 90-day period for improvement. (Respondent’s Exceptions at 2) Similarly, respondent argues that the specifications in Charge Four “fall into the legal category of inefficiency,” and should, therefore, be dismissed. (*Id.* at 3) As to the comments attributed to respondent in Charge Two, respondent argues:

But for the comment allegedly made that the students were acting like monkeys and gorillas, which was directly testified to though clarified by Respondent, there was no direct testimony about the other comments. Respondent testified about these comments and what they meant and the context in which they were made***.” (*Id.* at 3)

Finally, respondent contends that the unprofessional conduct with which he was charged and found guilty in Charge Five was merely his reasonable response to being “challenged for no particular reason in front of his class***.” (*Id.* at 4)

In reply, the Board counters that the allegations concerning respondent’s deficient classroom performance and poor classroom management as set forth in Charge One and portions of Charge Four need not simply be viewed as charging inefficiency, because “his conduct amounts to incompetence that constitutes unbecoming conduct,” based on *Sokolow, supra*. (Board’s Reply at 2, 3, 5) The essential issue, the Board argues, is whether respondent is fit to perform as a teacher, notwithstanding the nomenclature of the charges. Further, the Board contends that the ALJ properly sustained certain allegations in Charge Two and respondent’s assertion that he did not mean to offend students by his comments is irrelevant where such comments are “offensive or defamatory on their face.” (*Id.* at 4-5). Finally, with respect to the allegations of unprofessional conduct in Charge Five that were sustained by the ALJ, the Board avers that respondent presents no evidence in support of his claim that he acted reasonably, under the circumstances. (*Id.* at 5, 6)

Upon careful and independent review of the record in this matter, the Commissioner determines to modify the Initial Decision. Initially, the Commissioner recognizes that the enabling statute provides that tenured staff shall not be dismissed or reduced in compensation “except for inefficiency, incapacity, unbecoming conduct, or other just cause***.” *N.J.S.A.* 18A:6-10. Additionally, the Commissioner recognizes that “[w]hether the charges fall under any of the categories is a determination for [him] to make.” *In the Matter of the Tenure Hearing of Walter Driscoll, School District of Woodstown-Pilesgrove Regional High School, Salem County*, Appellate Division decision October 25, 1983, Docket No. A-748-82T2. As noted

by respondent, however, where a Board brings charges of inefficiency, it must comply with procedural requirements set forth at *N.J.A.C.* 6A:3-5.1(c). The Board undisputedly did not comply with this procedural requirement.

Furthermore, the Commissioner notes that the record herein contains *only one* documented classroom observation of respondent. (Ex. P-36) Notably, there is a dearth of documentary and/or testimonial evidence herein to show that the Board has conducted observations, or prepared evaluations and Professional Improvement Plans (PIPs) over the term of respondent's employment, in accordance with its responsibilities under *N.J.A.C.* 6:3-4.1 *et seq.* Rather, in stark contrast to the cases cited by the Board, the record herein consists primarily of reprimands, student complaints and increment withholdings in order to substantiate the Board's charges of "negligent instruction" and "poor classroom management."¹ Although failure to bring forth such evidence may be of no legal consequence where these allegations are essentially undisputed by respondent, given the outcome of this decision, the Commissioner finds it is unnecessary to determine whether the instructional and classroom management deficiencies alleged by the Board in Charge One and portions of Charge Four, although sounding in inefficiency, would constitute unbecoming conduct, pursuant to *Loria, supra*, and *Driscoll, supra*.

Instead, the Commissioner finds that based on the totality of record before him, the Board has established the following by a preponderance of credible evidence:

- Respondent was reprimanded on January 10, 1994 for referring to students under his charge as "monkeys and gorillas." (Charge Two, paragraph 12)

¹ Indeed, in *Sokolow, supra*, and in *Loria, supra*, the records were *replete* with documentation of classroom deficiencies in the form of observation reports, evaluations and PIPs performed over a protracted period. *See also, In the Matter of the Tenure Hearing of April Renee Bradley, School District of the City of Newark, 1991 S.L.D. 2521; In the Matter of the Tenure Hearing of Delia Kind, School District of the City of Newark, 1988 S.L.D. 2074; and In the Matter of the Tenure Hearing of Patricia Nafash, School District of Ridgefield, 1984 S.L.D. 333.*

- Respondent was reprimanded on February 17, 1994 for commenting in front of several students that if drugs were sold at a White Castle restaurant, then it should be called “Black Castle.” (Charge Two, paragraph 13)
- Respondent was reprimanded in April 1995 for referring to students as “fucking pigs” and “fucking animals” in the kitchen area of the school cafeteria. Several cafeteria workers heard these comments. (Charge Two, paragraph 17)
- Respondent was reprimanded in December 1994 for yelling “at the top of your voice” for students to sit down. The Principal who heard this shouting was standing in the driveway. The Principal reminded Respondent about previous requests to refrain from yelling, screaming and shouting in the classroom. (Charge Four, paragraph 26)
- Respondent was formally reprimanded in February 1998 for leaving his classroom unattended after a disturbance. Respondent was instructed that under no circumstances is it permissible for a teacher to leave students unattended and unsupervised. (Charge Four, paragraph 31)
- Respondent was formally reprimanded in October 1998 after Supervisor, Fred Pistorius, entered the room and questioned his activity. Respondent stated, “find yourself another teacher” and stormed out of the room, in the presence of students. This incident represented the third abandonment of his classroom in one year. (Charge Four, paragraph 33)
- Respondent was reprimanded in March 2001 for leaving a cigar butt and a note written on a ripped envelope on the desk of the Daylight/Twilight Program Principal, William Tracy. The cigar butt was found on a student desk but Respondent failed to determine the owner, and just assumed it belonged to a student assigned to the desk, even though that student had left the room. Respondent was specifically reprimanded for the following:
 - a. failing to report to the administration that a student had left class without permission;
 - b. failing to report that the same student reentered class;
 - c. failing to address the student’s behavior in class;
 - d. failing to investigate to learn the owner of the cigar and making uninformed accusations;
 - e. submitting a note that was “unprofessional at best”;
 - f. leaving a cigar butt in an administrator’s desk without using any kind of sanitary receptacle; and
 - g. involving the Principal in a relatively minor classroom disturbance that should have been handled by the Respondent. (Charge Four, paragraph 37);

- In April 2001, Respondent interrupted another teacher’s class (apparently to retrieve some belongings) and the Teacher-Facilitator, Ronald Sheppard, was called in to ask him to leave. Respondent argued with Sheppard before leaving and continued to argue in the hallway. (Charge Five, paragraph 42)
- After being questioned by Teacher-Facilitator, Ronald Sheppard, about deficiencies in classroom management in May 2001, Respondent told Sheppard to “shut up and sit down” so he could continue teaching his class. (Charge Five, paragraph 43)

The Commissioner determines, therefore, that the above findings, and underlying facts which formed the bases of the reprimands, support the conclusion that respondent is guilty of unbecoming conduct.²

It is now axiomatic that teaching “requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *In the Matter of Jacque L. Sammons, School District of Black Horse Pike Regional, 1972 S.L.D. 302, 321.* Likewise, the Commissioner is mindful that “[u]nfitness for a position under the school system is best evidenced by a series of incidents.” *Redcay v. State Board of Education, 130 N.J.L. 369, 371 (Sup. Ct. 1943), aff’d 131 N.J.L. 326 (E. & A. 1944).*

The Commissioner has dismissed tenured teaching staff members for conduct that included inappropriate comments to students. *See, e.g., In the Matter of the Tenure Hearing of Catherine Cooper, City of Bridgeton, Cumberland County, Commissioner Decision March 22, 2001; In the Matter of the Tenure Hearing of Henry Komorowski, State-operated School District of the City of Jersey City, Hudson County, Commissioner Decision July 27, 2000, aff’d State Board December 6, 2000; In the Matter of the Tenure Hearing of Campbell, 93 N.J.A.R.2d (EDU) 196, aff’d State Board 93 N.J.A.R.2d (EDU) 604, aff’d App. Div. 95 N.J.A.R.*

² The Board asserts, by way of an incorporation clause in Charge Six that “Respondent should be dismissed for unbecoming conduct a teacher, insubordination, or other just cause based upon the totality of the allegations contained in Charges One through Six ***.” (Board’s Statement of Tenure Charges at 9)

2d (EDU) 211; and *In the Matter of Van Gilson*, 93 N.J.A.R 2d (EDU) 378, *aff'd* State Board 93 N.J.A.R.2d (EDU) 630. Here, respondent has demonstrated a pattern of improper conduct toward students and staff alike. He has been duly warned on many occasions over a number of years that his behavior was not consistent with the professional conduct that is expected of a teacher. Furthermore, based on this record, it cannot be said that respondent's behavior is an aberration; nor can it be said that it is more likely than not that such conduct would not be repeated in the future. See, *In the Matter of the Tenure Hearing of Brady, Morris School District*, 92 N.J.A.R.2d (EDU) 410, 420. Rather, respondent's apparent refusal to accept responsibility for his behavior does not portend a positive learning environment for the students entrusted to his care, or a harmonious working relationship with those administrators who supervise him. See, *In the Matter of Maxine King, School District of Old Bridge Township, Middlesex County*, Commissioner Decision February 25, 2002. Respondent's unprofessional conduct is all the more offensive when displayed before other staff and students. *Brady, supra*, at 412. This "is not the conduct pupils should be encouraged to emulate." (*Id.* at 420) The Commissioner is satisfied, therefore, that the charges and proofs established herein reflect a pattern of professionally unacceptable conduct which cannot be tolerated in a school setting, and comprise the "series of incidents" envisioned by the Court in *Redcay*, warranting respondent's loss of his tenured position.

Accordingly, the Initial Decision of the ALJ is modified as set forth herein. Respondent is deemed dismissed from his tenured teaching position in the Trenton School District of the date of this decision. This matter is hereby referred to the State Board of

Examiners for action against respondent's certificate as it deems appropriate.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2002

Date of Mailing: October 15, 2002

³ 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.