

IN THE MATTER OF THE TENURE :
HEARING OF CURTIS ROBINSON, :
STATE-OPERATED SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF THE CITY OF PATERSON, : DECISION
PASSAIC COUNTY. :

SYNOPSIS

The petitioning Board certified tenure charges of conduct unbecoming and other just cause against respondent Curtis Robinson – a tenured teacher – for alleged inappropriate, unprofessional and offensive behavior toward students and staff, including physical abuse against classified students with disabilities; the Board sought dismissal of respondent from his tenured employment.

The ALJ found that: the Board carried its burden of proving eight of the original charges of unbecoming conduct against respondent; respondent's actions were violative of the public trust and his behavior constituted conduct unbecoming a teacher; and the Board's determination to remove respondent was reasonable and necessary in order to insure the safety and well being of students and staff. The ALJ ordered that the tenure charges were sustained, and recommended that his teaching certificate be revoked.

Upon independent review of the record, the Commissioner concurred with the ALJ's findings as to the seriousness and unacceptability of respondent's conduct, and found that the Board had sustained its burden of proving eight of the tenure charges by a preponderance of credible evidence. Accordingly, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, noting, however, that certificate revocation is solely within the jurisdictional purview of the State Board of Examiners – to whom this decision will be transmitted for action against respondent's certificate(s) as that body deems appropriate.

<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>

October 3, 2008

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Both petitioner and respondent filed timely primary and reply exceptions which were fully considered by the Commissioner in reaching her determination herein.

Respondent's exceptions charge that the decision of the Administrative Law Judge (ALJ) "perpetrates a gross miscarriage of justice, is arbitrary and capricious, and is not based on substantial evidence in the record." (Respondent's Exceptions at 1) Essentially recasting and reiterating his presentations made below, respondent maintains that the ALJ erroneously concluded that the District had carried its burden of proving Charge 1, Charge 2, Charge 3, Charge 4 – Count 3, Charge 5, Charge 7 and Charge 8. In reaching her determinations on these charges, respondent contends that the ALJ credited the testimony of the District's witnesses which he alleges was inconsistent and incredible while ignoring his competent testimony and that of his witnesses which respondent avers directly contradicted the proffers of the District's witnesses. Respondent presents extensive discussion of certain hearing testimony on each of these charges which he alleges supports his position. Respondent maintains that had

the ALJ adequately weighed the credibility of respondent's witnesses against that of the District's witnesses, the charges would have been dismissed. Finally, in finding him guilty of Charge 16 –which incorporates all of the prior charges to reach the conclusion that respondent, as a whole, conducted himself in a manner unbecoming a teacher – he advances that the ALJ improperly used evidence of alleged prior bad acts to support the District's charges against him. Specifically, he argues:

The Initial Decision cited to three documents stating that they support the testimonial evidence. (Initial Decision, p. 56) However, all three documents pre-date the charges which allege conduct during the 2000-01 school year through the 2003-04 school year. Letters and memos from Mr. Jenkins regarding alleged conduct by the Respondent in the years prior to the charges do not prove the charges actually brought by the District and clearly demonstrate the prejudice that is inherent when allowing into evidence documents relating to “prior bad acts.” (Respondent's Exceptions at 31)

In reply, the District asserts that the ALJ's credibility determinations are fully appropriate and supportable. It maintains that respondent's reliance on isolated excerpts of testimony in an attempt to disparage the credibility of the District's witnesses is fruitless. “Without exception, Petitioner's witnesses stood to gain nothing by their testimony. No one was still in a close working relationship with Respondent such that his departure, or his humiliation, would benefit the witness. Virtually every witness specifically testifying to events which took place at School 4 was no longer on site at that school.” (District's Reply Exceptions at 3) Furthermore, the District alleges, the ALJ clearly considered the testimony of respondent's witnesses and found their testimony to be irrelevant. Each of these witnesses (except Campbell and V.H.) admitted that he or she was not present in respondent's classroom on a regular basis during the time period covered by the charges. With respect to V.H. and Campbell, the ALJ

specifically found V.H. to lack credibility and Campbell was removed from her position, seriously calling her credibility into question. (*Id.* at 10)

As to respondent's challenge that the ALJ used "prior bad acts" to support the charges, the District advances "Judge Rigo's consideration of certain proofs which predated the charges was wholly appropriate. The documents at issue are part of Respondent's personal file and, more importantly, directly refuted the testimony of Respondent's witness Julian Jenkins, who attempted to characterize Respondent in a positive light." (transcript citations omitted) (*Id.* at 16)

Exceptions of the District take issue with certain summaries of witness testimony set forth by the ALJ in her decision claiming that these do not necessarily reflect "complete summaries of each and every witness's relevant direct and cross-examination testimony," and it proceeds to supply what it avers was mistakenly omitted. (District's Exceptions at 2-5) The District next cites to specific hearing testimony which it purports demonstrates that certain charges which the ALJ found were not sustained, in actuality, were aptly supported. (*Id.* 5-11) In conclusion, in light of the fact that the majority of the tenure charges were deemed proven, the District seeks a declaration that the testimony of respondent specifically denying such charges and the testimony of his witnesses attempting to refute them was incredible. (*Id.* at 11)

Respondent's reply exceptions state (1) that the ALJ was under no obligation whatsoever to include the specific testimony cited by the District in her summaries and 2) credibility doubts, conflicting testimony and lack of corroboration amply explain the ALJ's refusal to sustain the charges identified by the District. (Respondent's Reply Exceptions at 1-3)

Respondent further observes that the Initial Decision made very few findings with respect to witness credibility. "Finding that a charge was proven does not automatically mean

that the testimony of witnesses offered to rebut those charges was not credible.” Respondent proposes that the ALJ should have made specific credibility findings with respect to each and every key witness of both the District and the respondent. (*Id.* at 4)

Upon a comprehensive review of the complete record of this matter – which included transcripts of the proceedings at the OAL,¹ together with exhibits, pre- and post-hearing briefs, exceptions and reply arguments – the Commissioner agrees with the conclusion of the ALJ that the District has established that respondent is guilty of unbecoming conduct warranting removal from his tenured position.

In reaching her determination herein, the Commissioner fully recognized that the outcome of this matter with regard to the proving of the charges turns almost exclusively on the credibility of witnesses and the weighing of evidence. This being the case – and the ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before her, and having made findings of fact based on their testimony – the standard governing the Commissioner’s review is clear and unequivocal:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.
(*N.J.S.A. 52:14B-10(c)*)

Upon a reasoned review of the record with this governing standard in mind, contrary to the parties’ exception assertions, the Commissioner is satisfied that the ALJ’s recitation of testimony is both accurate and thorough, and that she carefully measured its relevance to the charges,

¹ The record contains transcripts of proceedings conducted on April 6, April 7, April 12, April 18, and April 27, 2006, May 4, May 8, and May 30, 2006, June 6, June 12 and June 14, 2006, August 8 and November 13, 2006, December 7, December 21 and December 22, 2006, May 1, May 17 and June 1, 2007 and out-of-state deposition transcript dated April 16, 2007.

conflicts, inconsistencies, potential biases, and the plausibility of its content in deciding which testimony to credit in reaching her findings of fact.² As such, the Commissioner accepts the ALJ's factual findings (Initial Decision at pp. 48-56), determining that they are amply supported by the record before her.

In summary, the Commissioner therefore finds – as did the ALJ – that the District has sustained its burden of proving the following charges of unbecoming conduct against respondent by a preponderance of the competent, relevant and credible evidence:

Charge 1 – During the course of the 2000-2001, 2001-2002 and 2002-2003 school years respondent used inappropriate language towards students;

Charge 2 – On or about February 4, 2004, respondent hit and/or punched V.H. [one of his students] in the face several times and pushed her out of her chair, causing V.H. to fall to the floor;

Charge 3 – Respondent exhibited inappropriate physical conduct towards [student] A.T.;

Charge 4 – On or about November 21, 2001, respondent used inappropriate language and physical conduct towards instructional aide Michelle Coleman;

Charge 5 – On or about November 26, 2001, respondent made unwarranted, unprofessional, offensive and/or sexist remarks to staff member Teresa Granata.

Charge 7 – During the 2002-03 school year, respondent would hit, punch and/or beat N.H., a classified handicapped male student, with his hands and/or a yardstick.

On or about May or June 2003, respondent picked up N.H. by his upper body and shoved him against the blackboard telling him to sit down, causing N.H. to cry.

² The parties' exception arguments charging that the ALJ erred in failing to reach specific credibility determinations on each of the witnesses who appeared before her – thereby calling into question the validity of her Initial Decision – are found to be meritless. To the extent that the ALJ neglected to make "specific" declarations as to the credibility of each of the 31 testifying witnesses, the Commissioner finds and concludes that these assessments are clearly inferentially evident from her recitation of the witnesses' proffered testimony in light of the aforementioned review.

Charge 8 – During the 2003-04 school year, respondent routinely hit, punched and/or beat J.T., a classified, handicapped male student in his class.

On or about February 4, 2004, respondent punched J.T. in his chest as a method of disciplining him for failure to do his class work.

Charge 16 – All of the above charges are incorporated to find that, by virtue of his repeated unbecoming behavior towards his students and colleagues and his use of profanity directed at the students in his class, respondent, as a whole, conducted himself in a manner unbecoming a teacher. (Initial Decision at pp. 48-56)

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that she is required to consider respondent'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 must consider any 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. 1967). Initially, in this regard, the Commissioner is particularly cognizant that it has long been recognized that – by virtue of the unique position they occupy – educators must be held to an enhanced standard of behavior. As was succinctly stated in *In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional*, 1972 S.L.D. 302, 321:

[Teachers] are professional employees to whom the people have entrusted the care and custody of tens of thousands of school children with the hope that this trust will result in the maximum educational growth and development of each individual child. *This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.* (emphasis added)

Moreover, as a special education teacher entrusted with the care and instruction of classified students with disabilities, recognition of and strict adherence to this requisite standard of

behavior is, of necessity, even more crucial. Next, the established charges are, indeed, very serious in nature. Clearly, respondent's physical abuse of his students in an attempt to control children who refused to listen to his instructions went beyond professional boundaries. It is of no import that V.H., A.T., N.H. and J.T. may have been prone to misbehavior and at times difficult to control, as there is no excuse, under circumstances of the type herein, for offensive touching of a pupil by a teacher. As noted in *In the matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County*, 1969 S.L.D. 159, 172-173, *aff'd* State Board, 1970 S.L.D. 448, *aff'd* N.J. Superior Court 1972 S.L.D. 662 (App. Div. 1972):

[w]hile the Commissioner understands the exasperations and frustrations that often accompany the teacher's functions, he cannot condone resort to force and fear as appropriate procedures in dealing with pupils, even those whose recalcitrance appears to be open defiance. The Commissioner finds in the century-old statute prohibiting corporal punishment (*N.J.S.A. 18A:6-1*) *an underlying philosophy that an individual has a right not only to freedom from bodily harm but also to freedom from offensive bodily touching even though there be no actual physical harm...*(emphasis added) (citations omitted)

Similarly, the Commissioner finds that the respondent's use of profanity and deprecating remarks to his students could have a serious deleterious effect on the self-esteem and psyche of impressionable young children – particularly where, as here, these children are already suffering from varying degrees of social or emotional or mental impairment. Additionally, the lack of professional respect accorded to his co-workers compromises the ability of the District to provide educational services to its students in a stable, stress free environment.

While considering respondent's length of employment with the District and other positive attributes attested to by his character witnesses, the Commissioner is nonetheless satisfied that the charges proven herein are not "trivial," but rather reflect a pattern of verbal and physical

abuse of students, and demeaning and threatening behavior toward fellow staff members – professionally unacceptable conduct which cannot be tolerated in a school setting.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. Respondent is hereby dismissed from his tenured teaching position with the State-operated School District of Paterson. This matter will be transmitted to the State Board of Examiners for action against respondent’s certificate(s) as that body deems appropriate.³

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: October 3, 2008

Date of Mailing: October 3, 2008

³ As part of her decision forwarded to the Commissioner for review and consideration, the ALJ recommends that respondent’s teaching certificate be revoked. It is noted that certificate revocation is solely within the jurisdictional purview of the State Board of Examiners.

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.