

IN THE MATTER OF THE TENURE :
HEARING OF BRIAN TAYLOR, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION
EAST ORANGE, ESSEX COUNTY. :
_____ :

SYNOPSIS

The petitioning school district certified thirteen tenure charges of unbecoming conduct and other just cause against respondent – a tenured middle school science teacher – for alleged inappropriate behavior toward students, parents and staff, in which he demonstrated poor judgment, an inability to control his temper and demeanor, and insubordination, and on one occasion, initiated a physical altercation with a fellow teacher. The respondent acknowledged that much of the alleged behavior had occurred, but opined that his inappropriate behavior was attributable, *inter alia*, to a personality conflict with his supervisor, a diagnosis of depression for which he was never referred for counseling by the district, and inadequate support in a challenging educational environment.

The ALJ found that: the Board has established by a preponderance of the credible evidence that respondent acted in a manner that is not appropriate for a school teacher and not commensurate with a teacher’s function as a role model; respondent failed to control his temper, exercised poor judgment, made disparaging remarks about students, allowed his feelings of frustration and anger to overwhelm his professional demeanor, and engaged in behaviors which caused staff members to feel physically threatened. Accordingly, the ALJ concluded that the respondent’s behavior constituted conduct unbecoming a teacher, and that the determination of the Board to remove respondent was reasonable and necessary in order to insure the safety and well being of students and staff.

Upon careful and independent review of the record, the Commissioner concurred with the findings of the OAL and adopted the Initial Decision as the final decision in this matter. A copy of this decision will be transmitted to the State Board of Examiners for action as that body deems appropriate.

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.

September 21, 2009

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Primary and reply exceptions of the District were filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4. Respondent sought and was granted an extension of time within which to file exceptions and replies and these submissions were received within the adjusted timelines.¹

The District excepts to the Administrative Law Judge’s (ALJ) finding that Charge III – which alleges that respondent stormed into a coach’s office and intentionally bumped into his supervisor, Mr. Kramer, and subsequently became boisterous and hostile – had not been sustained. Although finding that respondent’s conduct was “loud, boisterous and inappropriate,” the ALJ concluded that it did not rise to the level of unbecoming conduct because he did not intentionally bump Mr. Kramer. (District’s Exceptions at 2) In so concluding the District charges that the ALJ ignored the facts 1) that Mr. Kramer’s credible testimony reflects

¹ It is noted that on August 17, 2009, respondent, Brian Taylor, attempted to submit *pro se* exceptions in this matter. By letter of the same date, Mr. Taylor was advised that the Commissioner and her staff are, by law, strictly proscribed from considering information or argument outside the formal record of contested case proceedings – **including papers sent directly by a party who is represented by legal counsel.** Therefore, respondent’s submission was returned to him without consideration.

that he perceived respondent's actions as intentional; and 2) that respondent admitted to bumping into Mr. Kramer and further admitted becoming both boisterous and hostile. (*Ibid.*) Moreover, it maintains that given the high level of self restraint required of a teaching staff member, this individual's "conduct, albeit inadvertent or accidental, may rise to the level of unbecoming conduct particularly when such conduct involves pupils or, as in Charge III, an immediate supervisor." (*Id.* at 3) The District, therefore, urges the Commissioner to modify the Initial Decision and find respondent guilty of unbecoming conduct on Charge III.

In reply, respondent urges that the ALJ correctly determined that – while he entered a room in a "rushed" manner, the evidence did not substantiate that he intentionally bumped into his supervisor, Mr. Kramer. The ALJ further recognized that respondent "was upset at having been accused of an absence from a staff meeting. It was this disconcertion which predicated her finding that he was loud, boisterous and inappropriate." (Respondent's Reply Exceptions at 2) Conceding that his demeanor was not entirely appropriate, respondent maintains that the ALJ rightly concluded that the record did not sustain a charge that his conduct warranted a finding of unbecoming conduct. (*Ibid.*)

Respondent's exceptions initially charge that the ALJ inappropriately found the testimony of Gary Kramer to be credible. He argues that Mr. Kramer was not required to testify in person but, rather, was permitted to testify telephonically and, as such, the ALJ did not have a sufficient basis upon which to find his testimony credible. Respondent proposes that the ALJ's opportunity to observe a witness and assess his demeanor is critical to any determination of a witnesses' credibility. In that the ALJ was deprived of the opportunity to personally observe Mr. Kramer's demeanor and, therefore, to fully and accurately determine the credibility which should be ascribed to his testimony, Kramer's uncorroborated testimony – which was the sole

basis for the ALJ's finding that respondent was guilty of unbecoming conduct on charges five and six and instrumental to her determination of unbecoming conduct on charges two and four – should not be accepted. As the ALJ did not have a sufficient basis for finding Mr. Kramer's testimony credible, and as respondent's testimony was not found to be incredible, respondent urges the Commissioner to reject all factual findings based on Mr. Kramer's testimony as being insufficiently supported by the record. (Respondent's Exceptions at 2-3)

Respondent next proposes that the ALJ's recommended penalty in this matter is excessive. He charges that the ALJ failed to take into consideration that in 2008 respondent – at the behest of the District – underwent a psychological evaluation wherein it was determined that he suffered from Depressive Disorder and psychiatric and/or psychological counseling was recommended. However, he avers, the District did not refer him for counseling. Additionally, respondent advances:

[b]esides failing to refer him for counseling, the record is replete with instances where the Petitioner School District provided Respondent with insufficient support in dealing with disruptive, disrespectful, and belligerent students, as well as inappropriately argumentative and hostile parents....In this case, Respondent was made to teach in a room where obscene, derogatory remarks about him were scrawled on the walls, and left there for two school terms, despite Respondent's bringing the issue to the attention of school administration. It was an unfamiliar student's repeatedly kicking his door which let Mr. Taylor to briefly leave his classroom in the incident described in tenure charge six, leading to the conclusion that the hallways were not adequately supervised...as was also evident from the incidents set forth in tenure charge seven. During the meeting referenced in tenure charge nine, it is clear that Principal Laura Trimmings took no action to protect Mr. Taylor when an irate parent referred to him as a "drug abuser" and possibly as a "child molester," despite having no basis for such claims... Moreover, Respondent testified that he had no classroom assistance, despite the fact that special-education students were included in his class..., and he was supposed to have assistance. It was one of these students, K.H., whose belligerent behavior (detailed in tenure charge one), predicated a finding of

unbecoming conduct as to Respondent vis-à-vis tenure charge one. At the very least, the allegations of unbecoming conduct faced by Respondent would not have been as significant, had he been afforded adequate support by Petitioner's administration. (Respondent's Exceptions at 4-7)

Respondent again argues – as he did below – that consideration of all of these factors, along with the fact that he has been successfully employed in the District since 1999 compels a penalty like that imposed by the Commissioner in *In the Matter of the Tenure Hearing of Adam Mierzwa*, Commissioner's Decision No. 283-08, decided June 23, 2008, *i.e.*, suspension without pay while he obtains training and assistance in anger management, conflict resolution and the handling of difficult and disruptive students, “together with an appropriate course of psychological counseling, with the understanding that if he fails to do so, his tenured employment with Petitioner will cease.” (Respondent's Exceptions at 9) Imposition of such a penalty “places neither the East Orange School District, nor its students, at any risk of being serviced by an inadequate teacher, but rather, simply affords Respondent Taylor the opportunity to demonstrate his ability to resume prior form.” (*Id.* at 9-10)

In reply the District counters that not only is respondent's argument that the ALJ improperly credited the testimony of respondent's former supervisor, Gary Kramer, without merit, such an argument is also untimely. It proposes that the ALJ granted permission on February 10, 2009 for Mr. Kramer to testify telephonically because of extenuating circumstances, specifically – he was out of state as a consequence of his wife's illness and medical treatment. The District avers that respondent has waived his right to object to Mr. Kramer's testimony as he failed to follow the appropriate process, *i.e.*, the filing of an interlocutory appeal of the ALJ's decision – whereupon the Commissioner would have issued a ruling on his objection. It charges that the raising of this issue post-hearing is nothing less than

disingenuous. (District's Reply Exceptions at 2-3) Moreover, the District argues, counsel for respondent had every opportunity to cross-examine Mr. Kramer at the hearing, which he did. Consequently, respondent was not prejudiced in any way. (*Id.* at 3) Notwithstanding that the ALJ found Mr. Kramer's testimony credible with respect to six of the thirteen charges filed against respondent by the District, despite respondent's contention that Mr. Kramer's "...uncorroborated testimony [was] the sole basis for the Court's finding," support for each of the charges included overlapping and corroborating testimony from a number of witnesses. (*Ibid.*) Labeling respondent's urging that the ALJ's findings with respect to Mr. Kramer be rejected as baseless, the District submits there was ample basis for the ALJ to find his testimony credible and to reject respondent's uncorroborated, self-serving testimony. (*Id.* at 4)

Turning to respondent's allegation that the ALJ's recommended penalty is unduly harsh, the District vehemently disagrees. Initially, it argues, respondent conveniently ignores the fact that the District engaged in a pattern of progressive discipline with him which included a number of written reprimands, an increment withholding and employment probation for the 2007-08 school year before it finally filed tenure charges against him. Also, contrary to respondent's contention that the District and its administrators failed to provide him support, the District points to Exhibit P-12 which attempted to assist respondent in correcting his deficiencies by setting up a process whereby his performance for the 2007-08 school year would be closely monitored. This process included "1) assessing [his] strengths and weaknesses; 2) feedback from the building principal and/or assistant principal; as well as, 3) additional staff guidance, assistance and support." Despite the District's efforts to counsel and assist him, respondent's behavior significantly deteriorated during the 2007-08 school year. (District's Reply Exceptions at 5) As to respondent's attempt to cast blame on the District for failing to refer him for medical

counseling, it maintains that such a charge is “absurd.” Although the District referred respondent for a psychiatric examination following his suspension, it cites to hearing testimony of the evaluating physician, Dr. James Cowan, stating that he found that respondent’s judgment appeared to be “within normal limits,” and that he did not complain of either depression or anxiety. (*Id.* at 6 – citations omitted) Finally, the District maintains that respondent’s reliance on *In the Matter of the Tenure Hearing of Mierzwa*, Commissioner’s Decision No. 283-08, decided June 23, 2008, in support of a penalty of training and assistance along with a course of counseling, is misplaced. As correctly found by the ALJ, the facts in that case are totally inapposite to the situation in this matter. Notably, the District points out:

(...) Respondent in *Mierzwa* engaged in isolated instances of inappropriate behavior that did not constitute a pattern of unbecoming conduct including reprimanding an unruly student who had been fighting on school grounds and allegedly forcing her to sit in a chair in the school office, as well as allegedly expressing himself in a loud, forceful manner with co-workers. At no time does the record indicate that Mierzwa physically assaulted or threatened anyone nor does the record indicate that Mierzwa engaged in one (1) event significantly flagrant action [sic] as to warrant his dismissal.

Unlike *Mierzwa*, Mr. Taylor’s single act of physical assault on December 14, 2007 (...) against a fellow teaching staff member, in the presence of students and staff was sufficient to warrant his dismissal. Furthermore, Respondent engaged in a series of inappropriate and unbecoming precursors with students, parents, colleagues and supervisors prior to his violent assault upon a fellow teaching staff member resulting in his suspension.
(District’s Reply Exceptions at 9)

The District, thus, urges the adoption of the Initial Decision.

Upon comprehensive review and consideration of the entire record of this matter, which included transcripts of the proceedings at the OAL,² together with exhibits, post-hearing

² The record contains transcripts of proceedings conducted on March 20, March 23, and April 2, 2009.

briefs, and the parties' exception 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 so concluding, the Commissioner was cognizant that the outcome of this matter with regard to the proving of the charges turns – in large measure – on the credibility of witnesses. This being the case – and the ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before her,³ 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, 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, conflicts, inconsistencies, potential biases, and the plausibility of its content in deciding which testimony to credit in reaching her findings of fact. Consequently, the Commissioner accepts the ALJ's factual findings (Initial Decision at 5-20), as they are amply supported by the record before her.

The Commissioner, therefore, finds – for the reasons presented by the ALJ in her decision – 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:

³ Thorough review of the record and transcripts of the telephonic testimony of the District's witness, Gary Kramer, which – as pointed out by the District – was in large measure corroborated by other witness testimony – provides no cause whatsoever to question the determination of credibility ascribed to his testimony by the ALJ.

Charge I – On May 12, 2006, respondent engaged in a verbal altercation with K.S., a special education student, following his refusal to let the student use the bathroom. During this altercation respondent made derogatory remarks to the student and threatened to “mush her in the face.” (Initial Decision at 5-6)

Charge II – On October 12, 2006, respondent made disrespectful and insubordinate remarks to his supervisor, Assistant Principal Gary Kramer, in front of students. Later that same day, respondent took his class to the book fair in full disregard of his supervisor’s clear directive not to do so. (Initial Decision at 7-8)

Charge IV – In October of 2006, respondent stormed out of an administrative meeting on two occasions, the second time slamming the door to the Principal’s office in the presence of the building Principal and an Assistant Principal. (Initial Decision at 9)

Charge V – On more than one occasion during the 2006-07 school year, following his supervisor’s classroom observation of him, respondent loudly addressed his supervisor – in the presence of students – with disparaging remarks. (Initial Decision at 10)

Charge VI – On November 21, 2006, respondent left his class unattended and upon returning, in the presence of his class, attempted to push his supervisor, who was standing in the doorway, aside. (Initial Decision at 10-11)

Charge VII – In or about January 2007, respondent engaged in a verbal altercation with student, A.N., after the student failed to adhere to his directive to return to her classroom and he made derogatory remarks to the student, either asking her “are you stupid and retarded?” or stating that she was acting “stupid” and “retarded”. Subsequently, at a conference with A.N.’s parent, respondent was unprofessional and disrespectful toward the parent. (Initial Decision at 11-13)

Charge VIII – On April 5, 2007, respondent approached his supervisor in a hostile and threatening manner and proceeded to point his finger and raise his voice at him. After respondent went back to his class for a few minutes, he then returned and confronted his supervisor a second time in a loud voice and in an aggressive manner. (Initial Decision at 13-14)

Charge IX – On April 11, 2007, after encountering disciplinary problems with M.C., a student in his class, respondent telephoned her father to report her behavior. During this call, respondent

asked M.C.'s father to speak with her about her conduct and then put the child on the phone. While M.C. was attempting to explain what had happened to her father, respondent continually interrupted her, screaming and talking over her. After hearing the aggressive nature of respondent's tone, Mr. C. requested that she put respondent back on the phone. When respondent returned to the phone he was rude and shouting. Mr. C. immediately drove to the school in an attempt to rectify the situation. When he arrived he asked to speak to respondent and the principal. During the subsequent meeting, respondent was rude and disrespectful to both Mr. C. and the principal. (Initial Decision at 14-16)

Charge X – On September 5, 2007, during a Superintendent's Convocation, respondent distributed fliers to staff members – encouraging them to join the Newark Chapter of the "International Nude Artists' Collective" – in violation of Board Policy #4136 (Initial Decision at 16)

Charge XI – On September 20, 2007, respondent exhibited aggressive and inappropriate behavior toward another staff member in the presence of students which involved yelling and screaming at the staff member, flinging open a door which hit the staff member, posturing toward the staff member in an intimidating manner while continuing to yell and holding up his fist at the staff member in a threatening manner. (Initial Decision at 17-18)

Charge XII – On December 14, 2007, respondent initiated a physical altercation with a fellow faculty member, James Lansing – in the hallway of the school in the presence of students and other staff members – which involved respondent tossing his cup of coffee, dropping his bag and proceeding to run towards Lansing and begin punching him. (Initial Decision at 18-20)

Charge XIII – All of the above charges are incorporated to find that respondent, as a whole, engaged in a course of behavior which constitutes a pattern of conduct unbecoming a teaching staff member, insubordination or other just cause warranting his dismissal. (Initial Decision at 20)

The Commissioner, however, finding the District's exception arguments unpersuasive, concurs with the ALJ – for the reasons detailed on pp. 8-9 of her decision – that the District has failed to sustain its burden of proof on **Charge III**, alleging that respondent stormed into a coach's office

intentionally bumping into Mr. Kramer who was standing in the doorway and subsequently proceeded to become angry and unruly.

In determining 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). Preliminarily, in this regard, it is by now axiomatic that – by virtue of the unique position they occupy – teachers 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)

The Commissioner has duly considered respondent's service in the District. She has also considered, in general, the stresses and strained relationships that may exist in any employment relationship whether in the public or private sectors. However, the proven charges here substantiate that respondent has demonstrated a pattern of improper conduct toward students, staff and parents alike. He was verbally abusive to his students, embarrassing them in front of their fellow students by calling them names and, on one occasion, even threatening one student with physical abuse; he was rude and disrespectful to parents attempting to conference

with him concerning issues involving their children; he was repeatedly disrespectful and belligerent towards his immediate supervisor and other administrative staff; he engaged in threatening, aggressive behavior towards his colleagues and, at one point, even initiated a physical altercation with one of them. Moreover, it is particularly egregious that many of respondent's negative interactions occurred in front of students in a classroom or in front of teachers and students in the hallways, thus sending a clear message – by example – that angry, disrespectful and out of control behavior is acceptable. This “is not the conduct pupils should be encouraged to emulate.” (See, *In the Matter of the Tenure Hearing of Brady, Morris School District*, 92 N.J.A.R. 2d (EDU) 410, 420. Additionally, despite receiving repeated warnings from the District that his unprofessional and inappropriate behavior was not consistent with the professional conduct that is expected of a teacher (See Exhibits P-1, P-2, P-4, P-5, and P-13), respondent has remained unwilling or unable to conform his conduct to that which must be reasonably expected from a teaching staff member. Consequently, 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. The Commissioner further notes that rather than taking responsibility for his actions, respondent apparently views himself as a victim rather than a perpetrator attributing his volatile inappropriate conduct to recalcitrant students, argumentative and hostile parents, and an unsupportive administration. This 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. Under these circumstances, the Commissioner cannot entertain the prospect of respondent's return to the District and the resultant potential for the perpetration of an unhealthy educational environment.

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 School District of the City of East Orange. This matter will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: September 21, 2009

Date of Mailing: September 21, 2009

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)