

#43-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE : COMMISSIONER OF EDUCATION  
HEARING OF KIM BANKS, SCHOOL  
DISTRICT OF THE TOWNSHIP OF : DECISION  
ORANGE, ESSEX COUNTY.  
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SYNOPSIS

The petitioning Board certified seven charges of conduct unbecoming and excessive absenteeism against respondent – a tenured secretary employed by the district since 1993 – for, *inter alia*, allegedly: conducting personal business during school hours; retrieving personal information about another District employee without permission; smoking on school grounds; unsatisfactory work performance; and attendance problems. Respondent denied the charges. The Board sought respondent’s removal from her tenured position.

The ALJ found, *inter alia*, that: witnesses for the petitioning Board presented credible and believable testimony, while respondent’s testimony was not credible; respondent conducted private business on the petitioning Board’s computer, which was a violation of the school district’s computer policy; respondent accessed and printed out a confidential transcript of another district employee without her authorization or permission; respondent smoked on school grounds in violation of district policy; respondent’s work performance during the 2001-02, 2005-06, and 2010-11 school years was unsatisfactory; and throughout her employment, respondent abused her sick leave by taking days off before and after holidays, vacations, and on pay days. The ALJ concluded that the Board had sustained its burden of proving six of the seven tenure charges against respondent, and the proven charges are sufficient to terminate her employment.

Upon independent review and consideration, the Commissioner concurred with the ALJ that petitioner met its burden to prove unbecoming conduct for the majority of the tenure charges, and that the proven charges are sufficient to warrant respondent’s termination from tenured employment. Accordingly, the respondent was dismissed from her tenured position.

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.

February 6, 2012

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This controversy arose when petitioner certified charges of unbecoming conduct against respondent, a tenured secretary. Upon review of the record, Initial Decision of the Office of Administrative Law (OAL), respondent's exceptions and petitioner's reply thereto, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner has met its burden to prove unbecoming conduct for the majority of the charges,<sup>1</sup> and that the proven charges are sufficient to warrant the discipline petitioner seeks.

The six charges found sustainable by the ALJ are:

**Charge One** – Conducting Personal Business during School/Work Hours

**Charge Two** – Retrieving Personal Information About an Employee Without Authorization

**Charge Four** – Smoking on School Grounds in Violation of *N.J.S.A. 26:3D-58* and School District Policy

**Charge Five** – Unsatisfactory Performance in the 2001–02, 2005–06 and 2010–11 School Years

**Charge Six** – Excessive Transfers Due to Poor Performance During the Period from September 29, 1997, to September 1, 2006

**Charge Seven** – Failure or Refusal to Adhere to Recognized Procedures Regarding Staff Attendance Despite Counseling on Multiple Occasions.

Since the sustainability of the charges depends heavily upon factual findings, it is important to recognize at the outset that the Commissioner must accept the ALJ's credibility

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<sup>1</sup> Of seven charges, the ALJ found six to be sustainable and found Charge Three to lack sufficient support in the record.

determinations unless the record blatantly contradicts same, *see, e.g., N.J.S.A. 52:14B-10(c); D.L. and Z.Y. on behalf of minor children, T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div. 2004).

Thus, in evaluating Charge One, the Commissioner must consider the credibility determinations made by the ALJ. More specifically, the ALJ regarded as credible the testimony of Jocelyn Easley – former Supervisor of Guidance in petitioner’s school district – that she observed respondent conducting on-line shopping during school hours. (1T49-50<sup>2</sup>) This testimony related to a comment on the third page of respondent’s March 8, 2011 “Secretary Observation Report,” which comment disclosed that during times when respondent did not have regular tasks to complete, she would conduct personal business instead of requesting additional assignments. (Exhibit A-1(b)) Respondent denied that she shopped on-line at work, but there is nothing in the record as a whole that would compel the Commissioner to reject the ALJ’s determination that Easley was a more credible witness than respondent. The Commissioner accordingly sustains Charge One.

Charge Two does not require extensive discussion. Respondent admitted that she retrieved the transcript of another district employee – without authorization. (3T166-67) The charge is accordingly sustained.

Charge Four is based upon the observation of Maxine Johnson, a former principal and Board of Education member in petitioner’s district, who observed respondent leaving the Orange High School building with a cigarette in her mouth and entering an Orange Board of

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<sup>2</sup> 1T designates the transcript of the first day of the hearing at the OAL.  
2T designates the transcript of the second day of the hearing at the OAL.  
3T designates the transcript of the third day of the hearing at the OAL.  
4T designates the transcript of the fourth day of the hearing at the OAL.

Education van. (3T12; 3T16-17) She testified that she did not see smoke, but that respondent “turned her head as you would to light a cigarette.” (3T18) Johnson reported the incident to High School Principal Erica Stewart, who issued respondent a written reprimand. (Exhibit D-11) Respondent ultimately, on cross examination, admitted that she had smoked in the Board of Education van on the way to the Board offices. (4T133-35) Accordingly, Charge Four is sustained.

The Commissioner agrees with respondent that it is appropriate to consider Charges Five and Six together, as the transfers referenced in Charge Six are not so much infractions as they are the consequence of deficiencies such as those alleged in Charge Five, *i.e.*, unsatisfactory performance. Indeed, Belinda Scott Smiley – petitioner’s District Human Resources Administrator – testified that each transfer of respondent was made because a building administrator was dissatisfied with respondent’s performance. *See, e.g.* 2T111, 2T112-13, 2T114-15.

Examination of evaluations and memoranda in respondent’s personnel file over the thirteen or so years of her employment in petitioner’s district reveals the documentation of several performance issues that remained unresolved. Conspicuous among those issues were timeliness/accuracy, organization, and compliance with procedures and directives.

As early as August 1998 the principal of Heywood Avenue School, Matthew Bocchino, wrote to petitioner that her work was inaccurate and untimely, and would lead to a “negative job recommendation” if it did not improve. (Exhibit F19) In 2000, Bocchino’s successor, Amanda Wright-Stafford, documented an incident in which copies of test booklets were not completed in time for a first grade test because respondent left her post without informing Wright-Stafford of her whereabouts. (Exhibit E18) Respondent was advised

that disciplinary action would be imposed in the future for such a departure from district procedures. (*Ibid.*) A year later respondent was transferred to Central Elementary School. (Exhibit F20)

Within two months of respondent's transfer to Central Elementary School, principal Athenia Whitworth wrote a memorandum about respondent's failure to timely submit a payroll report, causing hardship for many employees. (Exhibit E17) The memo indicated that Whitworth had already spoken to respondent numerous times about record keeping responsibilities, to no avail. (*Ibid.*) Because Whitworth concluded that poor organizational skills lay behind the untimeliness of respondent's work, she went to considerable lengths to compose a detailed task completion checklist to help with respondent's organization and time management.

In an evaluation of respondent dated March 8, 2002, Whitworth rated respondent's clerical and organizational skills as unsatisfactory and disclosed that respondent was refusing to use the checklist that Whitworth had prepared for her. (Exhibit E16) Whitworth did not recommend continued employment for respondent, and indicated that she and her staff did not "have time to beg [respondent] to complete routine tasks." (*Ibid.*) In a memorandum to Smiley concerning the March 8, 2002 evaluation, Whitworth further related that respondent "was absent every time that we were scheduled to have a task update conference," and was often unavailable during times when urgent deadlines needed to be met. (*Ibid.*)

Whitworth did one more evaluation of respondent on June 24, 2002. (Exhibit E15b) In it she rated respondent poorly in most categories, and maintained once again that respondent needed to follow a checklist (Whitworth's or her own) to improve her unsatisfactory clerical and organizational skills. (*Ibid.*) Once again, Whitworth did not recommend respondent

for further employment at Central School. Three months later respondent was transferred to Lincoln Avenue School.

Exhibit E15a suggests that after a year at Lincoln Avenue School the timeliness of respondent's work was still an issue. In a memorandum dated September 8, 2003 from Helen M. Tinsley, Assistant Principal, respondent was admonished about her failure to complete a master eligibility list and a five-day breakfast roster, notwithstanding that sufficient time had been provided for her to perform the tasks. (*Ibid*). Less than a year later, respondent was transferred out of Lincoln Avenue School and sent to Orange Alternative School. (Exhibit F22) Five months after that, in February 2005, she was transferred to Oakwood Avenue School. (Exhibit F24)

Less than a year after respondent arrived at Oakwood Avenue School, its principal, Kalisha S. Neain, wrote respondent a memorandum – dated November 7, 2005 – concerning her organizational deficiencies and timeliness. (Exhibit E14a) The memo documented respondent's failure to timely submit several staff and student attendance reports. Neain noted that respondent was not implementing the suggestions that Neain had made to aid respondent in improving her organizational performance, and warned that future failure to timely submit attendance reports could lead to disciplinary action. (*Ibid.*) Untimely submission of attendance sheets remained an issue, however, as evidenced by a February 10, 2006 memorandum from Neain to respondent. That memorandum also disclosed that respondent did not complete a payroll report and, subsequently, failed to comply with an order to fax same to the business office. (Exhibit E14c)

Other problems memorialized by Neain in respondent's first year of employment in Oakwood Avenue School were respondent's 1) failure to check telephone messages and relay

them to teachers,<sup>3</sup> 2) failure to notify Neain before taking a personal day, Exhibit E14b,<sup>4</sup> and 3) abandonment of her post to accompany her grandson to have his photo taken by Oakwood Avenue's photographer on Picture Day at the school.<sup>5</sup> (Exhibit E-14c) In light of the performance problems evidenced by Exhibits E14a, b, and c, Neain gave respondent poor ratings on her June 2006 observation/evaluation report, and recommended that her increment be withheld for the 2006-07 school year. (Exhibit E13) A few months later respondent was transferred to Orange High School. *See, e.g.* Exhibit G25.

For the 2007-08 and 2008-09 school years the record contains less information about respondent's performance than it does for the preceding years. However, the narrative summary in Exhibit A-1a – the first observation/evaluation report, dated June 24, 2010, which Easeley prepared regarding respondent's performance in the high school guidance office – indicates that respondent still needed improvement in organization and timeliness, for instance in providing responses to transcript requests from students.<sup>6</sup>

The proper processing of transcript requests remained an issue, as reflected in memoranda dated August 2, 2010 (Exhibit A-2a), October 1, 2010 (Exhibit 31d), October 4, 2010 (Exhibit 31b), October 7, 2010 (Exhibit 31e) and November 3, 2010 (Exhibit A-2a). Further, during the 2010-11 school year other examples of respondent's failure to complete assigned tasks, and/or to follow the directives of her supervisors were documented in memoranda

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<sup>3</sup> Respondent had apparently been admonished about this on multiple occasions. Exhibit E14b.

<sup>4</sup> In a memorandum dated November 9, 2010, Guidance Supervisor Jocelyn Easeley also complained that respondent took a half day without first notifying her. (Exhibit 31a)

<sup>5</sup> Respondent's grandson was not a student at Oakwood Avenue School.

<sup>6</sup> For this evaluation Easeley gave respondent "satisfactory" ratings in all categories. She testified that because she was new to the job of supervising respondent, she hesitated to impose any negative ratings at that time.

by or to Easeley, *see, e.g.* Exhibits 31a, 31f, and A-2d, and in respondent's March 8, 2011 observation report, Exhibit A-1b.

The latter document makes clear that the recurrent performance issues of untimeliness, accuracy, lack of organization and disregard of procedures and directives from supervisors were as persistent in 2011 as they had been in 1998 when Bocchino addressed them. There are no exhibits directly rebutting petitioner's evidence about respondent's job performance over the years, and neither does respondent's testimony offer specific evidence disproving same. Moreover, the ALJ did not find respondent to be a credible witness, Initial Decision at 22-24, and there is nothing in the record as a whole that would compel the Commissioner to reject that credibility determination. Charge Five/Six is accordingly sustained.

As to Charge Seven, the last tenure charge, the record leaves little room for dispute. Petitioner's exhibits G25-29 include respondent's attendance records during 2006, 2007, 2008, 2009, and 2010. In her answers to interrogatories # 25 and 26 (Exhibit G33) petitioner stated: "I do not dispute the statement of days on which I was absent and/or tardy as set forth in my personnel file for each of the years identified in these questions." The exhibits include charts and memoranda showing that 1) respondent overused sick days and exceeded the total allowable leave in the 2006-07 school year, and 2) respondent's sick days were routinely taken directly before and after weekends and holidays during the 2006-07, 2007-08, 2008-09, and 2010-11 school years – a pattern that indicates misuse of sick leave.

Other testimony and memoranda indicate that respondent called out sick or left her post without proper notification to her supervisors – with negative consequences. Specific instances are documented in Exhibits E18, E14b, and E14c. Additionally, most of the evaluations of respondent that are included in the record (*i.e.*, evaluations from the 2001-02,



2005-06 and 2010-11 school years) indicate problems with attendance and punctuality. *See, e.g.* Exhibits A1a, A1b, E13, E15b, and E16.

Absenteeism has a negative impact on an employee's workplace. The foregoing evidence about respondent's unsatisfactory attendance, tardiness, and disregard of notification procedures is more than enough support for the petitioner's charge that respondent persistently failed to adhere to petitioner's policies regarding attendance and punctuality. Accordingly, Charge Seven is sustained.

In the Commissioner's view, respondent's performance history would be sufficient grounds for her termination from employment in petitioner's district. However, petitioner has also proven charges that suggest a lack of professionalism by respondent. Accordingly, Tenure Charges One, Two, Four, Five/Six and Seven are sustained and respondent is terminated from her position.

IT IS SO ORDERED.<sup>7</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 6, 2012

Date of Mailing: February 6, 2012

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<sup>7</sup> 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)