

#148-13 (OAL Decision: Not yet available online)

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

SYNOPSIS

The Board certified tenure charges consisting of seventeen counts of conduct unbecoming and insubordination against Ron Tuitt – a tenured teacher – for alleged inappropriate behavior that included urinating in a garbage can in his classroom; urinating in a plastic urinal in the classroom and having students empty the urinal; inappropriate conduct with students, including unauthorized emails and telephone calls to students’ homes; and failure to follow proper procedures during fire drills. Respondent denied the charges, contended that he is physically handicapped and wheelchair-bound, asserted that necessary accommodations for his handicap were refused by the school administration, and sought reinstatement to his teaching position, as well as lost wages and attorney fees.

The ALJ found, *inter alia*, that: respondent requested that a school custodian purchase a plastic urine bottle for him, which he then kept in his classroom; on numerous occasions during the 2006-2007 school year, respondent urinated in the bottle after instructing his students to close their eyes; he then directed one of his students to carry the bottle to the boy’s bathroom to flush away the contents; the transport of the urinal bottle to the bathroom by students was observed by the custodian repeatedly for more than a year; on September 29, 2009, respondent released urine in and around a trash can in his classroom, then failed to clean it up or notify anyone that cleanup was necessary; although teachers are not permitted to drive students home without prior permission, respondent drove two students home on numerous occasions; respondent had telephone communications with a student without permission; respondent ignored directives from school administration to refrain from using students to run personal errands for him, and to stop using the elevator during fire drills; respondent sent numerous emails to a student and his mother which were “line for line” inappropriate and unprofessional; respondent’s actions on numerous occasions violated Board Policy 3280 “Liability for Pupil Welfare” and Board Policy 3281 “Inappropriate Staff Conduct”; and, based on the above, the Board met its burden to prove that respondent is guilty of fourteen counts of unbecoming conduct and insubordination. The ALJ concluded that the appropriate response to the sustained charges – either individually or considered together – is the loss of tenure.

Upon comprehensive review of the entire record, the Commissioner adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner found that respondent’s contention that the school administration did not provide him with suitable accommodations cannot excuse his behavior, and – regardless of the difficulties respondent may face because of health issues – urinating in the classroom can never be condoned under any circumstances. Accordingly, the respondent was dismissed from his tenured position and the matter was transmitted to the State Board of Examiners for action against his 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>

April 18, 2013

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

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the respondent, Ron Tuitt, and the Board of Education (Board) pursuant to *N.J.A.C. 1:1-18.4*, and the Board’s reply to the respondent’s exceptions.¹

This case involves tenure charges brought by the Board against the respondent, a teacher in the Paterson School District. The Board charged the respondent with 17 counts of unbecoming conduct and insubordination stemming from conduct that included urinating in a garbage can in the classroom; urinating in a plastic urinal in the classroom and having students empty the urinal; inappropriate conduct with students; and failure to follow proper procedures during fire drills. The Administrative Law Judge (“ALJ”) found that the respondent was guilty of 14 counts of unbecoming conduct and insubordination.² As a result, the ALJ recommended that the respondent be removed from his tenured position in the Paterson School District.

¹ The respondent filed a reply to the Board’s exceptions beyond the five day time limit under *N.J.A.C. 1:1-18.4(d)*. Therefore, the respondent’s reply was not considered.

² The ALJ found that the Board proved all of the charges against the respondent except Charges Six, Seven and Eight.

The respondent's exceptions substantially reiterate the substance of his post-hearing submission at the OAL, recasting the arguments therein to support the contention that the ALJ erroneously sustained the Board's charges. In his exceptions the respondent addressed each of the charges found to be proven by the ALJ. Specifically, the respondent asserts that the ALJ erred in finding respondent guilty of unbecoming conduct because he never urinated in a plastic urinal in the classroom and although he admits urinating over the trash can on one occasion, it was an accident caused by a urinary tract infection. Respondent contends that it is inconceivable that any teaching staff member would urinate in a urinal in the classroom and have students dispose of the urine, and it is likewise incomprehensible that the ALJ could have found such allegations to be true. The respondent also argues that the Board failed to prove that he was guilty of any count of insubordination because he followed Dr. James's directives after he was told not to transport students in his car, not to allow the students to sit in his motorized wheel chair and not to send the students on personal errands. The respondent argues that once he was given a directive, "he immediately and always complied" and "therefore, he was never insubordinate". (Respondent's Exceptions at 24)

Further, the respondent generally takes exception to the ALJ's factual findings, maintaining that the ALJ failed to take into account certain witness testimony and that she often ignored the respondent's version of the events in question. Additionally the respondent takes exception to the ALJ's credibility determinations, specifically noting that the ALJ failed to point to any inconsistencies or statements of fact to suggest the respondent was not credible. Moreover, the respondent contends that the ALJ failed to take into account the record as a whole and the fact he "had a stellar Career at School 13 until Dr. James arrival [at the school] in September of 2009". (Respondent's Exceptions at 33) Finally, the respondent contends that he is physically

handicapped and wheelchair-bound and after Dr. James came to the school, she took away the accommodations that had been implemented by the prior administration to make things easier for him. Therefore, the respondent argues that he should not be removed from the Paterson School District.

In its exceptions the Board urges the Commissioner to adopt the findings of the ALJ as to the charges that were found to be proven, and to dismiss the respondent from his tenured position with the school district. With respect to the three charges that the ALJ dismissed, i.e. Charges Six, Seven and Eight, the Board takes exception to the ALJ's determinations. The Board argues that the allegation in Charge Six (having students run personal errands) and the allegation in Charge Seven (letting the children sit in his motorized wheelchair) were both part of the conduct that was included in Charge Fifteen as a violation of Board Policy 3280, which was sustained by the ALJ. As a result, the Board maintains that since the ALJ found that the Board proved Charge Fifteen, this in turn means that Charges Six and Seven were also proven. The Board also contends that the ALJ erroneously dismissed Charge Eight, arguing that the respondent had the students stay after school to help him carry items to his van without having permission from their parents.

In its reply, the Board maintains that the respondent's exceptions in large part merely recite the arguments made in his post-hearing submission. The Board also points out that if the ALJ did not reference respondent's arguments and factual assertions, it was because they were not deemed compelling by the ALJ and therefore not "found." Additionally, the Board made similar arguments that were advanced in its submissions below, providing a specific response to each of the respondent's exceptions to the individual charges.

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the hearing dates conducted at the OAL between March 28, 2012 and October 2, 2012, the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct and insubordination, and that he violated Board Policies concerning conduct with students. The Commissioner finds the ALJ's fact-finding analysis and conclusions as to the truth of the Board's allegations and the characterization of respondent's behavior as insubordinate and unbecoming conduct to be fully supported by the record and consistent with applicable law. The Commissioner is also in accord with the ALJ's determination to dismiss Charges Six, Seven and Eight for the reasons stated in the Initial Decision.

Notwithstanding respondent's contentions to the contrary, the Commissioner finds no basis in the record – which includes transcripts of 12 days of hearing – to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

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)].

Here, the ALJ found that the respondent's testimony involving his denial of the fact that he urinated in a plastic bottle in the classroom and had the students dispose of the urine was not credible. The ALJ specifically found, "Mr. Tuitt was highly motivated to deny that he urinated

in the plastic bottle and that he directed students to dump the urine in the boys' bathroom. He vehemently denied that 'it could happen.' However, his denials were countered by the credible testimony of numerous witnesses as to what 'did happen.'" (Initial Decision at 7) With respect to the incident where the respondent urinated in and around a garbage can located in the classroom, the ALJ similarly found the Board's witnesses to be more credible. "I find Custodian Alva's description of the stance in which she saw Mr. Tuitt, standing next to the garbage can with his hand on the wall, combined with the greater amount of urine in the trash can is credible and indicates that Mr. Tuitt removed his penis and urinated in the trash can on September 29, 2011." (Initial Decision at 11) The Commissioner finds the other arguments outlined in the respondent's exceptions to be unpersuasive, basically reflecting arguments and objections previously raised before the ALJ and taken into account by her in weighing the testimony and evidence, and in concluding that the record supported the majority of the Board's charges.

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that the "[f]actors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the individual's prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring." *In the Matter of the Tenure Hearing of Deborah Suitt-Green, State-operated School District of the City of Newark, Essex County*, decided by the Commissioner October 14, 1997, slip. op. at 32, citing *In re Hearing of Ostergren, Franklin School District*, 1966 S.L.D. 185; *In re Hearing of Kittell, Little Silver School District*, 1972 S.L.D. 535, 541; *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967). It is

also well recognized that, by virtue of the unique position they occupy, educators must be held to an enhanced standard of behavior.

The Commissioner recognizes that the charges in this matter are serious in nature and finds that the respondent's egregious conduct necessitates the termination of his tenured position. The respondent's unbecoming conduct and insubordination were not the result of an isolated incident, but rather a pattern of outrageous conduct that is not appropriate in a school environment.³ In addition to the episode where the respondent urinated in the garbage can located in the classroom, on several occasions he urinated into a plastic container in the classroom in the presence of children, and then instructed the children to dispose of the urine. That type of inappropriate and absolutely revolting behavior will not be condoned under any circumstance.

Further, despite the respondent's incredible lack of judgment, the record shows that he has not accepted responsibility for his actions, but instead has attempted to blame the administration for not providing him with suitable accommodations. Regardless of the difficulties that the respondent may have faced because of his health issues, urinating in the classroom is never an appropriate solution. Moreover, the charges in this matter do not simply stem from respondent's habit of urinating in the classroom; there were also several other instances of inappropriate conduct that demonstrate a complete disregard for Board policies. As a result, the Commissioner finds that the respondent is unfit to discharge the duties and functions of his position as a teacher.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from his tenured position with the Paterson School

³ The details and history of respondent's conduct are extensively outlined in the Initial Decision and need not be repeated here.

District. 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: April 18, 2013

Date of Mailing: April 18, 2013

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)