

#19-13 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF CANDACE BESSELLIEU, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE HOPEWELL : DECISION
VALLEY REGIONAL, MERCER COUNTY. :

SYNOPSIS

The Board certified tenure charges of conduct unbecoming and other just cause against Candace Bessellieu – a tenured special education teacher in petitioner’s school district – following a party at respondent’s home, during which other school staff members smoked marijuana and drank alcohol with respondent’s minor son. The petitioning Board contended that respondent had violated several board policies in connection with this incident – including Board Policy 3159, which sets forth requirements for certificated staff to report any arrests and criminal charges to the superintendent pursuant to *N.J.A.C. 6A:9-17.1(c)* – and sought removal of respondent from her tenured position.

The ALJ found, *inter alia*, that: respondent did not report her arrest or charges against her within fourteen calendar days, as required by board policy and *N.J.A.C. 6A:9-17.1(c)*; respondent likewise did not report on the disposition of the charges, which was her acceptance into a pre-trial intervention (PTI) program; pursuant to *N.J.A.C. 6A:9-17.1(c)*, failure to report is just grounds for revocation or suspension of a certificate holder’s teaching certificates; respondent’s conduct in allowing staff members to drink alcohol and to smoke marijuana with her minor son was in violation of Board Policy 3230, which directs staff to refrain from conduct that – if given publicity – would have an adverse effect upon the schools or community; respondent’s conduct in allowing another staff member to smoke marijuana and drink alcohol was also in violation of Board Policy 3280, which requires teaching staff members to protect the well-being of students; respondent’s behavior was clearly in violation of Board Policy 3281, Inappropriate Staff Conduct; and the Board has sustained its burden of demonstrating that respondent’s conduct was unbecoming a teacher. The ALJ concluded that respondent’s actions in allowing staff members to smoke marijuana and drink alcohol with her underage son offended publicly accepted standards of behavior, and constitute conduct unbecoming a public employee in violation of *N.J.S.A. 18A:6-10*. Accordingly, the ALJ ordered that respondent be removed from her tenured teaching position.

Upon full consideration and review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter with one modification. The Commissioner did not find that respondent violated Board Policy 3280, Pupil Welfare, which was clearly designed to establish the responsibilities of staff members regarding the supervision of students within the school district and does not extend to how staff members handle their own children who do not attend school in the district. Accordingly, the respondent was dismissed from her tenured position and a copy of this decision was forwarded to the State Board of Examiners for action as that body may deem 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>

January 15, 2013

IN THE MATTER OF THE TENURE :
HEARING OF CANDACE BESSELLIEU, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE HOPEWELL : DECISION
VALLEY REGIONAL, MERCER 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 pursuant to *N.J.A.C. 1:1-18.4* by the respondent, Candace Bessellieu, and the Board of Education’s (Board) reply thereto.¹

This case involves tenure charges brought by the Board against the respondent, a special education teacher in the Hopewell Regional School District. The Board charged the respondent with unbecoming conduct based on one incident during which the respondent had a party at her home where other staff members smoked marijuana and drank alcohol with her minor son.² The Administrative Law Judge (“ALJ”) found that the respondent was guilty of unbecoming conduct, and that the respondent violated several board policies, including Policy 3159, Teaching Staff Reporting Responsibilities; Policy 3230, Outside Activities; Policy 3280, Pupil Welfare; and Policy 3281, Inappropriate Staff Conduct. As a result, the ALJ recommended that the respondent be removed from her tenured position in the Hopewell Regional School District.

In her exceptions, the respondent argues that the ALJ erroneously found that she was guilty of unbecoming conduct and that she violated several different board policies. First,

¹ The record contains no transcripts from the hearings conducted at the OAL on October 15 and 16, 2012.

² The original tenure charges included other charges of unbecoming conduct in charges 6-8, but it appears that those charges were not pursued at the OAL.

the respondent takes exception to the ALJ's finding that she violated Board Policy 3230, Outside Activities, which governs the conduct of staff members outside of the school setting. The respondent alleges that the ALJ failed to recognize that for a violation of the policy to occur, the respondent's outside activities must have interfered with her professional performance and the discharge of her responsibilities to the pupils of the district. Even assuming that the respondent was aware that the other staff members were smoking marijuana with her son – which respondent has repeatedly denied – that fact alone would not constitute a violation of the policy, according to the respondent, because it did not interfere with her professional performance or the discharge of her responsibilities to the pupils in the district. The respondent maintains the ALJ's determination that the Board's decision to remove the other staff members based on the incident resulted in a disruption to the school environment is irrelevant because those individuals are responsible for their own actions. Additionally, in support of her argument that she did not violate Policy 3230, Outside Activities, the respondent also contends that she did not violate Policy 5530 – the substance abuse policy – because that policy addresses substance abuse by pupils and it is undisputed that her son is not a student in the Hopewell Valley School District. Further, the respondent points out that it is not unlawful for her to allow her minor son to consume alcohol under *N.J.S.A. 2C:33-17*.

Respondent also takes exception to the ALJ's determination that she violated Policy 3280, Well-Being of Pupils. The respondent claims that the ALJ erroneously found that she violated the following provisions in the policy:

A teaching staff member must not require a pupil to perform tasks that may be detrimental to the health or well-being of the pupil or other pupils;

A teaching staff member must immediately report an instance of substance abuse, violence, vandalism, accidents or suspected child abuse in accordance with Policy Nos. 8442, 8461 and 8462.

The respondent argues that at no time did she require a pupil to perform a task detrimental to his health and well being. Again, the respondent emphasizes that her son is not a pupil in the district, and therefore all board policies are inapplicable to him. Respondent also argues that she did not fail to report any instance of substance abuse or neglect because not only did no such instances exist, but she also had no reporting duties. Moreover, the respondent stresses the fact that the incident did not occur on school grounds. Finally, the respondent notes that the Division of Child Protection and Permanency found the charge of child abuse and/or neglect to be unfounded. Accordingly, the respondent contends that the ALJ erred in finding that the respondent violated Policy 3280, Well-Being of Pupils, or engaged in unbecoming conduct by failing to make a report.

The respondent also takes exception to the ALJ's determination that she violated Policy R3281, Inappropriate Staff Conduct. The respondent again argues that this policy is designed to protect pupils in the district, and any action or non-action taken by the respondent with respect to her son could not have been contemplated by the policy. The respondent further contends that her conduct cannot be considered inappropriate conduct under Policy R3281 because it has not been determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education and/or appropriate courts to be inappropriate conduct or conduct unbecoming a staff member.

In her exceptions, the respondent also argues that her failure to report her arrest and subsequent disposition is not unbecoming conduct. The respondent conceded she did not report her arrest to the Superintendent as required by *N.J.A.C. 6A:9-17.1(c)* and Policy 3159, Teaching Staff Reporting Requirements; however she maintains that the circumstances did not warrant that she do so. The respondent argues that the Ewing Township police department had

already informed the Superintendent that they intended to charge the respondent with drug possession and related charges prior to her arrest. Additionally, the respondent concedes that she failed to report the fact that she had entered into pretrial intervention, but argues that failure to report should not be considered here. Finally, the respondent maintains that there is no just cause warranting her dismissal because she has not violated any board policies since none of them are applicable to this matter; the Division of Child Protection and Permanency found the charges of abuse and/or neglect to be unfounded; and tenure charges 6-8 were based on charges that were dismissed by the Pennington Municipal Court and were not considered by the ALJ.

In reply to the respondent's arguments involving Policy 3230, Outside Activities, the Board maintains that the policy sets forth the Board's directive to avoid conduct that, if given publicity, would have an adverse or harmful effect on pupils or the school community. The Board argues that it is not necessary to show that the conduct interfered with her professional performance and the discharge of her responsibilities to the pupils of the district; rather, all that must be shown is that such harm would follow the publicity of the conduct. The Board contends that if it became public knowledge that district staff members hosted marijuana parties and allowed students to consume alcohol with staff members, both students and the school community would be adversely affected. The Board also points out that the ALJ found the respondent's testimony was not credible when she denied having any knowledge that her son was smoking marijuana with the other staff members in her basement. The Board asserts that the ALJ's credibility determinations are entitled to deference because the ALJ's findings are supported by the evidence in the record.

In response to the respondent's claim that it is not illegal for her to allow her son to consume alcohol, the Board stresses that the decision of the Mercer County Prosecutor to

charge the respondent with child endangerment was based on underage consumption of alcohol and marijuana in her home.³ The Board also asserts that the ALJ did not find that the respondent violated Policy 5530 so any reference to that policy in the respondent's exceptions is irrelevant. The Board maintains that the ALJ properly found that it can impose community standards on teaching staff in order to prevent staff from engaging in conduct that tends to destroy public respect for government employees. Thus, the Board urges the adoption of the ALJ's determination that the respondent violated Policy 3230, Outside Activities, and Policy 3281, Inappropriate Staff Conduct.

The Board also argues that the ALJ properly found that the respondent violated Policy 3280, Pupil Welfare, because it was reasonable for the Board to determine that the respondent had a duty to all children, not just students, and that duty included preventing a child from engaging in alcohol and drug consumption. The Board contends that the ALJ properly realized that the district policies as applied to the respondent required a certain standard of conduct, regardless of whether the child was her son or not. Additionally, the Board reiterates the ALJ's conclusion that the Division of Child Protection and Permanency determination had no bearing on the present case. The Board also emphasizes that the respondent concedes that she did not report her arrest to the Superintendent nor did she report the disposition of her charges by way of pretrial intervention, and as such the ALJ's determination that the respondent violated Policy 3159, Teaching Staff Reporting Responsibilities, and *N.J.A.C. 6A:9-17.1(c)* should be adopted. Finally, the Board notes that the ALJ made no mention of the charges that were dismissed by the Pennington Municipal Court and as a result they should not be considered by the Commissioner.

³ Detective Sherman of the Hopewell Township Police Department testified, however, that illegal drug use was the exclusive basis for the charge.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct. The ALJ's finding in connection with the characterization of respondent's behavior as unbecoming conduct is fully supported by the record and consistent with applicable law. The term unbecoming conduct is elastic and broadly defined to include any conduct "which has a tendency to destroy public respect for [government] employees and competence in the operation of [public] services." *Karins v. City of Atlantic City*, 152 N.J. 532, 554 (1988). In this case, the respondent's decision to permit her minor son to smoke marijuana with other staff members amounts to unbecoming conduct regardless of whether any specific board policies were violated. Behavior rising to the level of unbecoming conduct "need not be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." *Hartman v. Police Dep't of Ridgewood*, 258 N.J. Super. 22, 40 (App. Div. 1992) (citing *Asbury Park v. Dep't of Civil Serv.*, 17 N.J. 419, 429 (1955)).

The Commissioner also finds no basis in the record to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ found that the respondent's testimony and denial of any knowledge that her underage son was smoking marijuana in her home with other staff members was not credible. The ALJ had the opportunity to assess the credibility of the witnesses who appeared before her and made findings of fact based upon their testimony. It is well established that the Commissioner must defer to the credibility findings of the ALJ unless these prove to be 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)*.

With respect to the policy violations, the Commissioner is in accord with the ALJ's determination that the respondent violated Policy 3159, Teaching Staff Reporting Responsibilities; Policy 3230, Outside Activities; and Policy 3281, Inappropriate Staff Conduct, for the reasons discussed in the Initial Decision. The Commissioner, however, does not find that the respondent violated Policy 3280, Pupil Welfare. Unlike the other policies that relate directly to staff conduct, Policy 3280, Pupil Welfare, involves rules that teaching staff members must follow for the proper supervision of pupils. Policy 3280, Pupil Welfare, states,

Teaching staff members are responsible for supervision of pupils and must discharge that responsibility with the highest levels of care and prudent conduct. All teaching staff members of this district shall be governed by the following rules in order to protect the well-being of pupils and to avoid any assignment of liability to this Board of Education or to a staff member personally in the event a pupil is injured. The Superintendent shall prepare such regulations as may be required to enforce the following rules:

1. Each teaching staff member must maintain a standard of care for supervision, control, and protection of pupils commensurate with the member's assigned duties and responsibilities;
2. A teaching staff member should not voluntarily assume responsibility for duties he/she cannot reasonably perform. Such assumed responsibilities carry the same potential for liability as do assigned responsibilities;
3. A teaching staff member must provide proper instruction in safety wherever course guides so provide;
4. A teaching staff member must report immediately to the Building Principal any accident or safety hazard the member detects;
5. A teaching staff member must not send pupils on personal errands;
6. A teaching staff member must never transport pupils in a personal vehicle without the approval of the Building Principal;

7. A teaching staff member must not require a pupil to perform any tasks that may be detrimental to the health or well-being of the pupil or other pupils;
8. A teaching staff member must immediately report any instance of substance abuse, violence, vandalism, accidents, or suspected abuse in accordance with Policy Nos. 8442, 8461, and 8462.⁴

Here, the ALJ found that respondent violated Policy 3280, Pupil Welfare, by allowing another staff member to smoke marijuana and drink alcohol with her minor child and by failing to report such conduct. Although the Commissioner agrees that it is reasonable for the Board to be concerned with pupils in general, a comprehensive reading of the entire policy indicates that the ALJ applied an expansive interpretation of the provisions that were not envisioned under the policy. It is clear that the policy is designed to establish the responsibilities of staff members regarding the supervision of district students. There is no indication in the record that Policy 3280, Pupil Welfare, was implemented and designed to impose guidelines for how teaching staff members handle their own children who do not attend school in the district.

Turning to the appropriate penalty in this matter, the Commissioner recognizes that the factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher'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 re Hearing of Kittell, Little Silver School District*, 1972 S.L.D. 535, 541; *In re Fulcomer*, 93 N.J. Super. 404, 422 (App. Div. 1967). In the case at bar, the record is devoid of information concerning the respondent's history with the district, including her prior record and other evidence which would typically serve as mitigating factors in determining the appropriate penalty. In the absence of

⁴ The record also includes another version of the policy that is very similar but expands on the requirements under Section 1 and 8.

any mitigating factors in the record on which to dispute the determinations of the ALJ, the Commissioner agrees that the conduct proven in this proceeding amply warrants respondent's dismissal from her tenured employment.

Accordingly, the Initial Decision of the OAL is adopted as modified with respect to Policy 3280, Pupil Welfare. Respondent is hereby dismissed from her tenured position with the Hopewell Valley Regional School 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.⁵

COMMISSIONER OF EDUCATION

Date of Decision: January 15, 2013

Date of Mailing: January 16, 2013

⁵ 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*)