

IN THE MATTER OF THE TENURE :
HEARING OF JAMES HOLMES, :
SCHOOL DISTRICT OF THE TOWNSHIP : COMMISSIONER OF EDUCATION
OF BRICK, OCEAN COUNTY. : DECISION

SYNOPSIS

The Board certified tenure charges of conduct unbecoming against James Holmes – a tenured teacher in petitioner’s high school business department – following complaints regarding respondent’s directing of students to internet sites that contained sexually suggestive and salacious material that was inappropriate for students and without pedagogical value. The petitioning Board sought removal of respondent from his tenured position.

The ALJ found, *inter alia*, that: respondent admitted using YouTube and asking students to view his videos on YouTube in order to get ideas on how to make a video; the videos to which respondent directed his students contained sexually suggestive and salacious material inappropriate for school students; the videos in question had nothing to do with the business course that respondent was supposed to be teaching; respondent used the Ning website as his school website, and therefore his students had no choice but to view the site in order to keep current with what was going on in class; the Ning site contained sexually suggestive material that is inappropriate for the school setting; respondent logged over 800 views of YouTube during school time, and most occurred when he should have been teaching, observing, or preparing to teach; and respondent used school technology for reasons other than learning, teaching and administration, in violation of the school district’s Acceptable Use of Technology Resources Policy 6142.10. The ALJ concluded that the Board amply sustained its burden of demonstrating that respondent’s conduct was unbecoming a teacher, and that the appropriate penalty is termination. Accordingly, the ALJ ordered that the tenure charges be sustained and respondent’s tenure be terminated.

Upon full consideration and review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and ordered a copy of this decision 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 4, 2013

OAL DKT. NO EDU 5944-12
AGENCY DKT. NO. 116-4/12

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and the District’s reply thereto – submitted in accordance with the provisions of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

This matter involves four tenure charges alleging unbecoming conduct brought by the School District of the Township of Brick against James Holmes, a teacher in the Business Department of Brick Township Memorial High School. Mr. Holmes taught courses in Leadership and Development, Entrepreneurship and Financial Literacy. Specifically, Charge 1 specifies that respondent directed students to Facebook and/or YouTube web site pages that contained sexually suggestive and salacious material inappropriate for his students and without pedagogical value; Charge 2 specifies that respondent directed students to a web site called Ning that contained sexually suggestive and salacious materials inappropriate for students and without pedagogical value; Charge 3 specifies that respondent logged over 800 views of YouTube during school time when he should have been teaching or observing students; and Charge 4 specifies that respondent violated the Board’s Policy No. 614210 – Acceptable Use for Technology

Resources because a) resources are to be used only for learning, teaching and administration; b) no software or external data is allowed on computers without permission from the superintendent or his designee; and c) improper use of computer is prohibited including sexually oriented material or using the network to access inappropriate material. The Administrative Law Judge (ALJ) found that the District had sustained each of its charges against Mr. Holmes and recommended that he be removed from his tenured position.

Respondent's exceptions – in large measure – recast and reiterate the substance of his closing arguments advanced at the OAL¹. In that it is determined that such arguments were addressed and appropriately resolved by the ALJ in her decision, they will not be revisited here. Respondent additionally maintains that the ALJ erroneously discounted his credible testimony refuting each of the District's charges against him. Finally, with respect to the number of uploads to his web site, he denies the authenticity of the District's proofs in this regard. For example, respondent charges that the District's computer expert manipulated his web site to show that he uploaded the video "Marshmallow World" sixty five times to his URL. Respondent maintains he only uploaded this video once. He contends that it is clear that the District was not satisfied with the evidence it had accumulated in this case and wanted more data against him. (Respondent's Exceptions at 12)

Upon a comprehensive review and consideration of the record in this matter – which included transcripts of the hearing conducted at the OAL on September 11, 2012, September 27, 2012 and October 1, 2012 – the Commissioner agrees with the ALJ that the District has established that respondent is guilty of each of the four counts of unbecoming conduct lodged against him and that removal from his tenured position is warranted.

¹ It is noted that the parties elected to present oral closing arguments (Transcript 10/1/2012, pages 154-168) rather than submitting post hearing briefs.

In so concluding, the Commissioner, initially, was cognizant that the outcome of this matter was significantly influenced by the ALJ's determination of the credibility of the witnesses. He finds no basis in the record 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 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 support by sufficient, competent, and credible evidence in the record.
[N.J.S.A. 52:14B-10(c)]

The Commissioner also finds that 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 unbecoming conduct to be fully supported by the record.

In determining the discipline which should be imposed in cases involving unbecoming conduct, the Commissioner considers the nature and circumstances of the incident(s) in question, the individual's prior record and current attitude, and the likelihood that the behavior in question will recur. *In the Matter of the Tenure Hearing of Frederick L. Ostergren, School District of Franklin Township, Somerset County, 1966 S.L.D. 185.*

Respondent here directed his students to Facebook and YouTube web pages containing sexually suggestive and salacious material which offended publicly accepted standards of decency and, thus, was wholly inappropriate for pupils in an educational setting. As noted by the ALJ, the images contained in some of respondent's YouTube videos can be described thusly:

The images from “Fat Bottom Girls” showed numerous pictures of obese women in underwear or scanty clothing. “Spill the Wine,” was a video of respondent’s wife dressed in a bra with her body viewable from behind as she was looking in a mirror. The video, “Stiletto,” a song by Billy Joel, consisted of silhouettes of women dancing. Another video, “Hot Legs,” a song by Rod Stewart, consisted of more silhouettes of women dancing, one on a pole looking like she was nude. One woman danced with a machine gun. (P-16) (Initial Decision at 4)

Similarly, the ALJ further noted the images contained on respondent’s Facebook page:

The page entitled, “Women with a Sense of Humor,” showed pictures of women pretending to perform sexual acts on statues and pose[d] next to statues that resembled parts of female anatomy. There were statues of hands groping the lower area of women, a woman doing an inappropriate act to Ronald McDonald and a woman wearing underwear with the words “All you can Eat.” (P-6, P-7) Additional pictures showed women with their buttocks exposed (P7-A, P7-B, P-9) along with women showing their bras over the heading “Big Boobs.” Also on respondent’s Facebook page was a picture of Rodney Dangerfield with a cartoon penis saying “And we were poor too. Why, if I wasn’t born a boy, I’d have nothing to play with!” (P-12) In addition, respondent has a number of comments made on politics, people, and homosexuality that Principal Caldes found inappropriate for students. (P-14) (Initial Decision at 4-5)

The Commissioner observes that it is readily apparent on this record that the respondent fails to understand and appreciate the magnitude of the responsibility attendant to being a professional educator:

...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...Those who teach do so by choice, and in this respect the teaching profession is more than a simple job; it is a calling. (*In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional, Camden County, 1972 S.L.D. 302, 321*)

More than any other profession, these individuals must be constantly aware that:

[t]eachers are public employees who hold positions demanding public trust, and in such positions they teach, inform and mold habits and attitudes, and influence the opinions of their pupils. Pupils learn, therefore, not only what they are taught by the teacher, but what they see, hear, experience, and learn about the teacher. When a teacher...violates the public trust placed in him, he must expect dismissal or other severe penalty...(*In the Matter of the Tenure Hearing of Ernest Tordo,*

School District of the Township of Jackson, Ocean County, 1974 S.L.D. 97, 98-99)

That the record here demonstrates respondent logged an inordinate number of personal views of YouTube during school time when he should have been teaching, observing students, or preparing to teach his classes evidences a serious lack of self-restraint and a dereliction of the essential responsibilities of a professional educator. Particularly troubling, however, is respondent's failure to recognize the improper and unprofessional nature of his actions. Although conceding that the material accessed by his students had no inherent educational value, he nonetheless continues to argue that it was properly part of the curriculum in that it was used to show "creativity". Although the teaching of creativity may be a legitimate and laudable undertaking, to entertain a belief that such a goal could or should be achieved in a public school setting by exposing young students to sexually suggestive and salacious material wholly unrelated to their course of study demonstrates a total lack of good judgment. Given respondent's steadfast resolve that the use of the types of materials at issue in this matter is a legitimate teaching tool for public school students, it cannot be said that respondent's behavior here was an aberration nor can it be said that it is more likely than not that such conduct would not be repeated in the future. This does not portend a positive learning environment for the students entrusted to his care. 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 recommended decision of the OAL is adopted as the final decision in this matter for the reasons presented therein. Respondent is hereby dismissed from his tenured teaching position with the School District of the Township of Brick as of the date of

this decision. A copy of this decision is being forwarded to the State Board of Examiners for action, as that body deems appropriate, against respondent's certificate(s).

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2013

Date of Mailing: January 7, 2013

² 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*).