

IN THE MATTER OF THE TENURE HEARING :
OF ALAN CARR, SCHOOL DISTRICT OF THE : COMMISSIONER OF EDUCATION
TOWNSHIP OF HADDON, CAMDEN COUNTY. : DECISION

SYNOPSIS

The petitioning school district certified tenure charges of unbecoming conduct against respondent – the tenured teaching staff Supervisor of Health and Physical Education, and Athletic Director for the district – as the result of a May 16, 2012 incident in which respondent placed a bag of dog feces on the windshield of an automobile belonging to his ex-wife, who is also employed as a teacher in the district, while it was parked on school grounds during work hours. The Board asserted that respondent engaged in conduct unbecoming a tenured teacher and that his conduct violated the district’s Harassment, Intimidation and Bullying (HIB) policy; the Board contended that respondent’s behavior warranted dismissal from his tenured position.

The ALJ found, *inter alia*, that: the issue in this case is not respondent’s guilt – as he admitted his transgression – but the appropriate sanction for his conduct; respondent’s action in leaving the bag of dog feces on the car was inappropriate and reprehensible; the May 2012 incident cannot be viewed without considering a preceding February 2012 incident in which respondent left an upsetting newspaper article in his ex-wife’s mailbox at work, though this episode was not included in the charges certified against respondent; however, he was warned after the February incident that further harassment of his ex-wife would result in disciplinary action; although respondent had no prior disciplinary record, he did receive that informal warning in February; respondent engaged in conduct entirely unbecoming a tenured teacher; regarding the appropriate sanction – given respondent’s conduct and his demonstrated inability to learn from the first incident in February – it would be “grossly unfair” to his ex-wife to have to deal with his return to teaching in the same school where she is employed. Accordingly, the ALJ concluded that respondent is guilty of conduct unbecoming a teacher, and ordered that his status as a tenured employee be terminated.

Upon independent review, the Commissioner concurred that the only issue here is the sanction for respondent’s acknowledged unbecoming actions. Regarding the penalty, the Commissioner rejected the ALJ’s recommendation as he found, *inter alia*, that the ALJ failed to conduct the requisite analysis of the factors to be taken into account in determining the appropriate penalty in a tenure case (*In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967)). The Commissioner determined that removal is an unduly harsh penalty given all of the circumstances existing in this matter, and is not justified because the proven conduct – which stemmed from a domestic matter not associated with his school duties – does not establish respondent’s unfitness to discharge the duties of his position. The Commissioner nonetheless recognizes that respondent’s behavior was highly improper and violated the standards of conduct expected of educators; as such, the penalty must be sufficient to impress upon him the seriousness of his errors in judgment. The Commissioner ordered that respondent: forfeit the 120 days pay withheld following the certification of the tenure charge; be suspended, prospectively, for an additional six months without pay; and forfeit one future salary increase. Accordingly, the Initial Decision of the OAL – as modified with respect to penalty – was adopted as the final decision in this matter.

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.

May 15, 2013

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TOWNSHIP OF HADDON, CAMDEN COUNTY. :
DECISION

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 – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in making his determination herein.

This matter involves tenure charges of unbecoming conduct and other just cause brought by the District against respondent, Alan Carr, a tenured teaching staff supervisor of Health and Physical Education and Athletic Director in the District.¹ The incident which precipitated the charges against respondent was his placement – on the afternoon of May 16, 2012 – of a bag of dog feces on the windshield of the automobile of his ex-wife, who was also employed as a teacher with the District, while her automobile was parked on school grounds and during the assigned work hours of both Mr. Carr and his ex-wife. Although not part of the charges here, there was a prior incident involving respondent and his ex-wife – in February 2012, shortly after their divorce – where respondent admittedly placed a newspaper article regarding bipolar disorder into his ex-wife's school mailbox which caused her significant

¹ The District further charged respondent with violating the District's Harassment, Intimidation and Bullying (HIB) rules. The Commissioner clarifies that the HIB law is intended to protect students, not staff, from harassment, intimidation and bullying.

emotional distress. School administrators warned respondent at that time that if he ever did anything similar again there would be disciplinary action taken against him.

The ALJ found that the respondent's behavior toward his former wife – a fellow teacher in the District – was of such a quality and character so as to severely compromise his ability to serve as a proper example to students and, therefore, recommended respondent's removal from his tenured position.

Respondent's exceptions maintain that the Administrative Law Judge (ALJ) erred in concluding that respondent should lose his tenured position as a consequence of his admitted behavior in this matter. Citing *In the Matter of the Tenure Hearing of Deborah Suitt-Green, State-Operated School District of the City of Newark, Essex County*, Commissioner Decision #538-97, decided October 14, 1997, citing *In re Hearing of Ostergren, Franklin School District*, 1996 S.L.D. 535; *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967), respondent contends that the ALJ failed to fully take into account well-established case law which dictates the required factors to be taken into consideration in making a penalty determination, *i.e.*, the nature and circumstance of the incidents or charges, the individual's prior record and present attitude, the effect of such conduct on the maintenance of discipline among students and staff, and the likelihood of such behavior recurring.

Initially in this regard, respondent accepts responsibility for and fully acknowledges that his behavior in this matter was wrong and quite inappropriate. Respondent explains, however, that the record substantiates that he was in a "bad place" at the time due to his divorce and a relatively serious medical condition. Respondent asks the Commissioner to also take into consideration that he has been employed by the District for 38 years with a heretofore

exemplary record. Throughout this entire period he has received nothing but outstanding evaluations.

Next, respondent observes that when discussing the appropriateness of dismissal as the sanction in this matter, the ALJ stated as a factor in his determination that “[h]is ability to serve as an (sic) proper example for students has been severely compromised”. (Initial Decision at 8) However, respondent urges that the Commissioner consider that neither of the two incidents at issue here occurred in the presence of any student nor is there any credible evidence in the record that any student knows about the facts in this matter.

As to the likelihood of such behavior recurring, respondent states that there is no evidence that his lack of good judgment last school year will be repeated. To the contrary, respondent urges that he has been undergoing counseling – and intends to continue to do so – which has been very beneficial in helping him move on from where he was emotionally at the time of his inappropriate conduct and his divorce.

Finally, although acknowledging that it is difficult to draw general principles or guidelines from cases involving unbecoming conduct as these are inevitably extremely fact-specific, respondent cites to a number of prior education decisions – where the conduct was more egregious than that in the instant matter – where the Commissioner determined that dismissal was not the appropriate sanction. Respondent urges that after consideration of the requisite penalty determination factors here, the Commissioner modify the ALJ’s decision and impose a more appropriate penalty of suspension without pay rather than dismissal.

In reply, the Board argues that respondent’s exceptions center around the argument that the ALJ failed to fully consider the requisite factors in making his penalty determination. Obviously, it argues, respondent is counting on his underlying work record and

years of service to insulate him from having his employment ended for committing crude and cruel acts against his former wife, who is still a Board employee. The Board charges that respondent's testimony in this matter evidences that – even up to the date of the hearing – he still harbored the belief that he was not treated fairly in the divorce settlement and his resentment continues. It is, therefore, reasonable to believe that – if respondent is regularly exposed to seeing his ex-wife in the workplace – he will again inappropriately target her. The Board professes that, given the respondent's present attitude and the likelihood of reoccurrence:

Ms. Russell should not have to go to work everyday and worry about what Mr. Carr may do. That is not a burden she should have to carry as she seeks to carry out her professional responsibilities to her students. She is not the one who should have to find work elsewhere in order to have assurance that Mr. Carr cannot effectively interfere with her at work. Rather, he is the one who should be permanently barred from her work place...(Board's Exceptions at 2)

The Board urges the Commissioner to adopt the recommended decision of the ALJ, as respondent has demonstrated that he has not been able to exercise a high degree of self-restraint and controlled behavior. In balancing his desire to be reinstated to his position against (1) his attitude, (2) the likelihood of the conduct reoccurring, (3) the Board's need to maintain standards of conduct for both students and staff, (4) the adverse impact of respondent's conduct on his ex-wife, and (5) her right to remain in the District without worrying about constantly being on Mr. Carr's radar, it is clear, the Board argues, that respondent's dismissal is the only way to assure that the legitimate expectations of the District and of respondent's ex-wife can be safeguarded.

Upon his considered review of the record, which it is noted did not contain transcripts of the hearing conducted at the OAL, the Commissioner initially concurs with the Administrative Law Judge (ALJ) that the major issue to be determined in this matter is not guilt – as respondent has admitted engaging in the behavior which is the subject of the charge against

him and, as found by the ALJ, it is without question that this behavior was conduct unbecoming a teaching staff member – but, rather, the sanction to be imposed for his acknowledged actions.

In determining an appropriate penalty, the Commissioner recognizes – as was pointed out by respondent in his exceptions – prior case law has clearly articulated specific factors which should be taken into account. The Commissioner finds that – in conducting the requisite analysis of these factors based on all of the circumstances and considerations existing in this matter – the removal of respondent from his tenured position is an unduly harsh penalty. The dismissal of the respondent is not justified in this case because the admitted conduct does not establish his unfitness to discharge the duties and functions of his position as a teaching staff supervisor of Health and Physical Education and Athletic Director, nor is there any indication that the respondent’s behavior – which stemmed from a domestic matter not associated with his school duties – will have any long term effects on the maintenance of discipline among the students and staff in the School District of the Township of Haddon. Respondent here recognizes the impropriety of his actions and takes full responsibility for them. Furthermore, given that the emotional and physical turmoil he was experiencing at that time has been alleviated by his active voluntary participation in counseling which he plans to continue, and the passage of time, the Commissioner cannot conclude that there is a likelihood of such behavior recurring in the future. Finally, the Commissioner is compelled to recognize that respondent’s conduct here, although reprehensible, was not as egregious as the conduct that has been reported in some prior cases relating to teacher termination.

Although dismissal in this case is not warranted for the reasons discussed above, the Commissioner recognizes that respondent’s conduct in this matter was grossly improper and exhibited a serious lack of good judgment and violated the standards articulated in such cases as

In re Tenure of Lucarelli, 97 N.J.A.R. 2nd (EDU) 537, 541 (Teachers are necessarily required to exercise a high degree of self-restraint and controlled behavior because they are entrusted with the custody and care of children), and *Hartmann v. Police Dep't of Ridgewood*, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting *Asbury Park v. Dep't of Civil Serv.*, 17 N.J. 419, 429 (1955)) (Misconduct need not necessarily “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.”) As such, the penalty in this matter must be sufficient to impress upon respondent the seriousness of his errors in judgment displayed in this matter.

Therefore, the respondent shall forfeit the 120 days pay withheld following the certification of the instant tenure charge, shall be suspended, prospectively, for an additional six months without pay and forfeit one future salary increase.

Accordingly, the recommended decision of the OAL, as modified with respect to penalty, is adopted as the final decision in this matter.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2013

Date of Mailing: May 15, 2012

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*)