

EDU #5326-98
C # 197-00
SB # 39-00

IN THE MATTER OF THE TENURE :
HEARING OF ROBERT I. GRUNDFEST, : STATE BOARD OF EDUCATION
SCHOOL DISTRICT OF THE BOROUGH : DECISION
OF MADISON, MORRIS COUNTY. :

Decided by the Commissioner of Education, June 20, 2000

For the Petitioner-Appellant, Rand, Algeier, Tosti & Woodruff (David B.
Rand, Esq., of Counsel)

For the Respondent-Respondent, Herbert, Van Ness, Cayci & Goodell
(Steven P. Goodell, Esq., of Counsel)

After an exhaustive review of the record in this matter, including the transcripts of the hearing held in the Office of Administrative Law, we affirm the decision of the Commissioner of Education to dismiss the tenure charges certified against the respondent for the reasons expressed therein. Even giving “due weight to the ALJ’s unique position and ability to make demeanor based judgments,” Whasun Lee v. Board of Education of the Township of Holmdel, Docket #A-5978-98T2 (App. Div. 2000), slip op. at 14, we conclude that the Madison Board failed to demonstrate the truthfulness of the charges—which alleged that the respondent had accessed pornographic web sites on his classroom computer during school hours—by a preponderance of the credible evidence.

The Board in this case presented only one witness who claimed to have seen the respondent viewing pornographic material on the computer: J.M., an 11-year-old fifth-grade student in the district at the time of the alleged incidents. J.M.'s testimony is particularly critical to this case since we agree with the Commissioner that the Board is unable to establish from the computer evidence when pornographic web sites might have been accessed, which sites if any were actually accessed, and by whom. We stress in that regard that the computer was not password-protected, did not have a log-in procedure and, indeed, was used by a number of other teachers. Indeed, the classroom was not locked until after it was cleaned at night by the custodial staff. Moreover, as found by the Commissioner, the subsequent attempt by other individuals to review the computer's files, including backdating the computer clock, seriously compromised the integrity of the evidence.

Although the ALJ did not make a specific finding that J.M. was credible or otherwise comment on his demeanor, he did credit J.M.'s testimony enough to find that the respondent's actions "were observed at least once by J.M." Initial Decision, slip op. at 20. In so doing, however, the ALJ also acknowledged that J.M.'s testimony was "somewhat inconsistent." Id. at 3.

As pointed out by the Commissioner, corroboration of student testimony is not necessarily required, but it has long been established that student testimony must be examined with great caution. E.g., In the Matter of the Tenure Hearing of Barry Deetz, decided by the State Board of Education, November 7, 1984, aff'd, Docket #A-1264-84T5 (App. Div. 1985), cert. denied, 101 N.J. 321 (1986). Moreover, we are cognizant of our obligation to "recognize and give due weight to the ALJ's unique

position and ability to make demeanor based judgments.” Whasun Lee, supra, slip op. at 14. See Quinlan v. Board of Education of North Bergen Township, 73 N.J. Super. 42, 50-54 (App. Div. 1962). However, we are equally aware that we are not bound by the ALJ’s assessments of the substance of the testimony of his evaluation of the factors which bear upon credibility. Deetz, supra. “The law does not require that the State Board automatically accept any ALJ’s credibility determination, even if the ALJ’s determination is based on sufficient evidence.” Whasun Lee, supra, slip op. at 13-14.

In this instance, J.M. testified that he saw the respondent viewing “like porno stuff; naked people,” on the computer. Tr. 10/12/99, at 70. J.M. indicated that the respondent was sitting in front of the computer viewing the images and that he could see nearly the entire screen from his seat, which was on an angle towards the computer. Id. at 72-74. He further testified that the other teachers who shared the classroom with the respondent would be going in and out of the room while he was there. Id. at 71. J.M., who was being tutored by the respondent three days a week, stated that he saw the respondent viewing these images “every time I would go to the classroom.” Id. at 74.

Three other teachers were assigned to the room with the respondent. Each had a separate work station separated from the others by low partitions. As more fully detailed in the Commissioner’s decision, the other teachers testified that teachers, students and staff were constantly going in and out of the room and that they had never observed the respondent viewing anything inappropriate on the computer. Nancy Croessmann, one of the teachers who shared the room with the respondent, testified that she could easily see the respondent’s computer from her work station, that she was

with students in the room while J.M. was with the respondent, that she also used the computer, and that she had never seen the respondent use the computer for any inappropriate purposes. Tr. 10/5/99, at 150-158.

We agree with the Commissioner's well-reasoned analysis rejecting the ALJ's reliance on J.M.'s testimony. See Commissioner's Decision, slip op. at 30-33. In light of J.M.'s tender age; the inconsistencies in his testimony; J.M.'s acknowledgement that he had lied on occasion to the respondent about having done his homework and about incidents that had occurred on the playground; the fact that J.M. had apparently threatened the respondent prior to the alleged computer incidents that he could get him fired; and the lack of witnesses who could provide any corroboration for J.M.'s allegations—despite his acknowledgement that other teachers were in the classroom while he was there—we conclude that the testimony of J.M. cannot be credited so as to substantiate the charges.

Given the problems inherent in a case of this nature, prudence dictates that district boards establish procedures that would protect the integrity of evidence when an accusation alleging improper use of a school computer is made. Such procedures should be designed with due consideration for the problems that can arise when the individual against whom such allegations have been made is permitted to have continued access to the computer, including the opportunity to delete damaging evidence, and when district staff with no technological expertise access the computer in an attempt to verify such allegations. Such measures would not only protect an individual against whom false allegations have been made, but would also preserve evidence of improper computer use.

Therefore, for the reasons expressed by the Commissioner as expounded herein, we agree that the Board failed to demonstrate the charges against the respondent by a preponderance of the credible evidence.

Roberta Van Anda abstained.

November 1, 2000

Date of mailing _____