

EDU #1528-01  
C # 140-02  
SB # 23-02

IN THE MATTER OF THE TENURE HEARING :

OF JOHN HOWARD, JR., BOARD OF : STATE BOARD OF EDUCATION  
EDUCATION OF THE CITY OF EAST : DECISION  
ORANGE, ESSEX COUNTY. :

---

Decided by the Commissioner of Education, April 1, 2002

Decision on motion by the State Board of Education, July 2, 2002

For the Petitioner-Respondent, Schwartz, Simon, Edelstein, Celso &  
Kessler, L.L.P. (Stephen J. Edelstein, Esq., of Counsel)

For the Respondent-Appellant, Andrew Babiak, Esq.

The Board of Education of the City of East Orange (hereinafter "Board") certified tenure charges against John Howard, Jr. (hereinafter "respondent"), its superintendent of schools, alleging unbecoming conduct. On February 6, 2002, an administrative law judge ("ALJ") concluded that the Board had demonstrated the truthfulness of the following charges by a preponderance of the credible evidence: Charge I, alleging that the respondent had permitted work to be done at his home by a district employee, Wallace White, during regular working hours; Charges VI, VII, VIII and IX, alleging that the respondent's actions in changing the address on his district annuity to his home

address and unilaterally withdrawing funds from that account constituted willful deception; Charge X, alleging that the respondent had relocated his office to a different building at significant cost without the Board's approval; Charge XI, alleging that the respondent had urged the district's business administrator to commit perjury and attempt to obstruct the Board's ongoing investigation of the respondent; and Charge XII, alleging that the respondent's behavior constituted a pattern of conduct warranting his dismissal. The ALJ concluded that the appropriate penalty under the circumstances was the dismissal of the respondent from his tenured employment.

On April 1, 2002, the Commissioner adopted the ALJ's decision with one modification. The Commissioner concluded that, in addition to the charges sustained by the ALJ, the Board also had demonstrated the truthfulness of Charge V. The Commissioner found that the respondent had misrepresented himself, breached the Board's trust and showed a lack of regard for special education students when he failed to disclose to the Board that the true purpose for his recommendation to hire Peter Andrews as a special education teacher was to assist in the writing of a screenplay. The Commissioner directed that the respondent be dismissed from his tenured position.

The respondent filed the instant appeal to the State Board. The respondent also filed a motion to supplement the record on appeal with an affidavit of Kevin Kovacs, Esq., the respondent's counsel in a civil action he filed in federal court against the Board. The respondent contends that it is necessary to supplement the record with that document in order to demonstrate that the Board's argument in these proceedings regarding the appropriate venue in which to litigate the respondent's retaliation defense

is “duplicitous, inconsistent and irreconcilable with the position it has asserted in the federal civil action.” Letter brief in support of motion, at 2.

Initially, we deny the respondent’s motion. We stress, as did the Commissioner, that the ALJ specifically provided the respondent with the opportunity to test the credibility of witnesses by presenting evidence of improper motive. In addition, the proposed exhibit is not relevant to the respondent’s contention that the Board had a retaliatory motive in filing these charges. Rather, the affidavit merely purports to describe the arguments being made by the Board in the federal action. Hence, the respondent is not offering any substantive basis to substantiate his contentions relating to retaliation.

We also deny the Board’s motion for leave to file a reply to the respondent’s exceptions to the Report of our Legal Committee.

Turning to the merits of the matter, after a thorough review of the record, which includes the transcripts from the hearing held in the Office of Administrative Law, we affirm the decision of the Commissioner. We fully agree that the Board has demonstrated the truthfulness of the charges sustained by the Commissioner and that such behavior constitutes unbecoming conduct warranting the respondent’s dismissal from his tenured position.

However, we modify the ALJ’s analysis, which was adopted by the Commissioner, regarding Charge III, which alleged that the respondent on more than one occasion had directed a district employee, Wallace White, to move his daughter in and out of her college dormitory at The College of New Jersey and that the moves were made with a district vehicle on Board time. Initially, we find that a letter dated May 22,

2001 from the Acting Director of Residence Life for The College of New Jersey, Exhibit R-158, in evidence, does not provide “documentary support for the time [Ms. Howard] checked out on the day that she admits White helped her move,” i.e., 8 p.m. on May 8, 1998. Initial Decision, slip op. at 15. Rather, as acknowledged by Ms. Howard, tr. 7/26/01, in evidence, at 93-94, that exhibit shows the time at which all students living in the dormitories were required to vacate their rooms. Accordingly, while the letter does indicate that all students were expected to check out of their dormitory rooms by 8 p.m. on May 8, 1998, which we note was a Friday, it does not verify Ms. Howard’s testimony that she actually moved out at that hour or contradict White’s testimony that he “never moved her after school hours.” Tr. 7/25/01, in evidence, at 193. Hence, although the ALJ did find Ms. Howard to be a credible witness, the letter does not provide documentary support for her testimony.

In addition, we differ with the ALJ in her assessment of White’s credibility with regard to his testimony that he had helped Ms. Howard move her belongings during working hours.<sup>1</sup> Although we agree that White’s recollection of those events, which occurred several years before the hearing, lacked precision, we find that his inability to recall details of the moves, including dates, does not vitiate the credibility of his testimony that he assisted Ms. Howard on several occasions. However, given the lack of precision with respect to the details of any particular move, we agree with the ultimate conclusion of the ALJ and the Commissioner that the Board has not demonstrated the truthfulness of the allegation set forth in Charge III by a preponderance of the credible evidence.

---

<sup>1</sup> The ALJ concluded that White’s testimony lacked sufficient detail to give it credibility.

Therefore, with the above modification to the analysis of Charge III, we affirm the decision of the Commissioner to dismiss the respondent from his tenured employment.

Attorney exceptions are noted.

Ronald K. Butcher and John A. Griffith abstained.

March 3, 2004

Date of mailing \_\_\_\_\_