

**STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES**

In the Matter of Tenure Hearing of Kevin Karp:

**BOARD OF EDUCATION OF THE TOWNSHIP
OF BARNEGAT, OCEAN COUNTY**

**Case No. 102-4/16
OAL Dkt. No. 05106-16**

and

**DECISION ON
MOTION**

KEVIN KARP

Before:

Edmund Gerber, Arbitrator

Appearances:

For the Board of Education of the Township of Barnegat:
Stephen B. Hunter, Esq.
Detzky, Hunter & DeFillippo, LLC

For the Respondent:
Jerry J. Dasti, Esq.
Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors

Respondent Kevin Karp has taught in the Barnegat School District for seven years. The Petitioner, the Barnegat Township School District, certified tenure charges against the Respondent on March 23, 2016. On May 2, 2016 I was appointed by the Department of Education to serve as arbitrator in this matter.

The tenure charges allege that:

- 1) The Respondent "repeatedly brushed up to and against the breasts of a (then) 12 year old female student (A.R.), when she was a seventh grader." A.R. specifically alleged that, when handing out papers in class the Respondent, K.K., reached out

across her desk and brushed up against her breasts with his arm, placing a paper on her desk. "On a few occasions A.R. advised that she attempted to move back in her seat to avoid contact, however, K.K. continued to manage to brush up against her."

- 2) A.R. alleged that K.K. made "cat calls" to her while she was in the hallway.
- 3) R.R. reported that K.K. made her uncomfortable by touching her exposed bra strap and on another occasion brushed up against her shoulders in class. K.K. made creepy comments about taking off sweaters and sweatshirts. K.K. was very touchy to her and other female student. On one occasions K.K. touched her hair and complimented her.
- 4) E.R. reported that when he was a student in K.K.'s wrestling class, there was a female wrestler, N.T. in the class. E.R. reported that K.K. would on occasion stare constantly at N.T. without her realizing it. "Other male wrestlers saw this and all the male wrestlers talk(ed) to each other about how K.K. unnecessarily and improperly continued to glance and stare at N.T. during wrestling practice. E.R. reported that K.K. made inappropriate comments and jokes to the students in his class, referring to the jokes as "dirty".
- 5) Another female student, K.Q. reported that she was in K.K.'s computer class in 7th grade, K.K. made a comment to K.Q. and her female friend for holding hands. He then essentially said "it was OK to try new things over Spring Break" to K.Q. and her two friends, (one male and one female).
- 6) K.Q. also reported that she sat at the end of row the in typing class. K.K. would brush against her when handing out papers in the row.

The charges include a Statement of Evidence sworn to and signed by Karen M. Wood Superintendent of Schools that the evidence in support of the charges is contained in a documentary exhibit annexed to the charges. The annexed exhibit contains emails and the transcribed notes of Superintendent Wood concerning her conversations with the board attorney, the local police, Ocean County Prosecutor's office and the Strauss Esmay Associates. There are also unsigned statements of two school administrators who interviewed the students whose complaints form the basis of the tenure charges. There are no signed statements in the annexed exhibits, not from the complaining students or the aforesaid school administrators.

N.J.S.A. 18A:6-11 states, in pertinent part, that:

Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the Secretary of the Board in writing, and a written Statement of Evidence under oath to support such charge shall be presented to the Board. The Board of Education shall forthwith provide such employee with a copy of the charge, a copy of the Statement of Evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. ...

N.J.A.C. 6A:3-4.1(b) (1) states that:

In all instances of the filing and certification of tenure charges, except charges filed against a teacher, principal, assistant principal or vice principal for reasons of inefficiency pursuant to N.J.S.A. 18A:6-17.3, the following procedures and timelines shall be observed:

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the Secretary of the District Board of Education or with the State District Superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person(s) instituting such charges.

N.J.A.C. 6A:3-5.1(6) states, in pertinent part, that:

If the District Board of Education or the State District Superintendent finds probable cause exists and the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the District Board of Education or the State District Superintendent shall file, within fifteen days, written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges. ...

Respondent has filed two motions seeking the dismissal of the tenure charges. The first seeks emergent relief, contending that Karp was improperly denied a "Rice Notice" when the District failed to notify Karp that it intended to discuss possible discipline of Karp. Rice v. Union County Regional High School Board of Education, 155 N.J. Super. 64, 72 (1977). The motion was initially denied by Administrative Law Judge (ALJ) Patricia M. Keirins on April 19, 2016 who found that the Respondent failed to meet the irreparable harm standard of Crowe v. DeGoia, 90 N.J. 126 (1982).

The second Motion to Dismiss argues that the tenure charges as filed are deficient and fail to comply with the requirements of N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1.

The parties made oral arguments on the motions at a hearing on May 18, 2016. The Respondent did not make specific argument as to its application for emergent relief but asked that I reconsider its motion and relied upon its submissions before Judge Keirins. Respondent made argument on its second motion. Specifically:

The Respondent argues that the Board of Education failed to comply with the requirements of N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1. The annexed exhibit to the Tenure Charges fail to state any of the dates or times when the alleged operative events occurred. The names of the persons involved are not provided and the Respondent asserts that it is impossible for him to identify all of the persons involved by the initials provided. Nothing in the annexed exhibit indicates the Board relied upon more than vague assertions. The Superintendent of Schools who signed the Statement of Evidence under oath did not assert any direct knowledge of any of the facts and relied upon the unsigned reports of school administrators who apparently interviewed the complaining students. There are no signed statements from any of these students. Nor are there any dates or times of the alleged acts mentioned in the annexed exhibit.

There is no indication as to what facts the Superintendent of Schools is attesting to under oath. There is merely a *jurat* and signature of a notary republic signed by the Superintendent entitled Statement of Evidence followed by the fifteen pages of unsigned documents which allegedly constitute the basis for the fling of tenure charges.

Respondent cites In the Matter of the Tenure Hearing of Frank King, School District of the City of Salem, Salem County, 2007 N.J. AGEN LEXIS 589 (2007) and In the Matter of the Tenure Hearing of Edwards, East Orange Board of Education, 1982 S.L.D. (2011) and the Matter of the Tenure Hearing of Marilyn Feitel, 1977 S.L.D. 451 (Aff'd 458). In all three cases tenure charges were dismissed for their lack of specificity. In King the tenure charges, "failed to state a time, or the alleged dates of the violations, nor were the names of the alleged victim or victims of the "unprofessional conduct" provided. Here the Board failed to provide the time or dates of the alleged occurrence nor has the Board provided the names of the alleged victims.

In Edwards the ALJ held that the statute requires a statement of evidence under oath in support of the charge. An oath connotes swearing to the truth of the facts asserted. But here the Superintendent is swearing to the truth of second hand assertions. The superintendent signed the oath without ever speaking to the victims or providing signed statements from the victims or even those members of the administration who interviewed said alleged victims.

The Respondent notes that Straus Esmay Associates develops policy and regulation manuals for school districts. The Annexed Exhibit lists the recommendations made by Straus Esmay. These included: Have the District obtain signed statements from

the complaining students; “Have the Principal call students/parents in and sign; K.W. (apparently, the Superintendent) should sit with the two school principals (apparently referring to the Principals who talked with the complaining students) and bring students in. Superintendent needs to hear it herself; personally with Principals talk with teacher (apparently the respondent), – explain”. There is no evidence or representation that the District did any of these things.

There is no reference in any of the documents attached to the tenure charges that anyone spoke to student E.R. and/or student wrestler N.T. Accordingly, the Respondent urges that the tenure charges be dismissed.

The Petitioner School District argues that the tenure charges were properly filed and meet all the statutory requirements. The documentary evidence annexed to the certification of the Board Superintendent includes fifteen pages of notes, investigative reports recitation of interviews with students and the parents of some of those students which provide ample evidence of the improper sexual conduct and sexual abuse inflicted by Mr. Karp.

The documentation attached to the tenure charges reveals the names of all the Board administrators who conducted the investigation and includes the dates that investigation was conducted and who was present. Although it does not indicate the names of the students involved, it was legal and appropriate for the Board to identify students by their initials and not use their proper names. The allegations of sexual abuse by the Respondent were made by children. The District was simply trying to protect the interests of minor children. The investigatory documents are thorough and detailed.

The District contends that the facts here are distinguishable for those in the cases cited by the respondent. In King, the Board only set forth general allegations of the Respondent’s unprofessional conduct. There was no written record of specific allegation to which the Respondent could respond. Here, one can easily see what the allegations against the Respondent concern sexual misconduct. In Feitel the Commissioner of Education held that that Board was woefully deficient in meeting the time requirements and failed to comply with prior directives of the Commissioner. These are not issues before this tribunal. Feitel has no relevance to this proceeding.

The Petitioner asserts that the allegations are specific, although for the protections of the students involved it used their initials rather than their full names. The tenure charges state specific acts and meet the requirements of the statute. The tenure charges are clear, expansive and very detailed. The documents meet all the requirements of N.J.S.A. 18A:6-11 and N.J.A.C.6A:3-5.1.

DISCUSSION

The Superintendent of the Barnegat Township School District, Karen Wood, swore to a statement of evidence and signed under oath the tenure charges but nothing in the record indicated she directly participated in the investigation of the student's complaints or talked to any of these students and/or their parents. Moreover the documents which were relied upon when the tenure charges were brought before the Board consisted of emails and unsigned memorandum from the school administrators who conducted the investigation and the Superintendent's own notes. There are no signed statements from any of the complaining students or their parents. N.J.S.A. 18A:6-11 requires that a "written Statement of Evidence under oath to support such charge shall be presented to the Board," Edwards. An oath connotes swearing to the truth of the facts asserted. Here however, no signed written statement by someone with direct knowledge of the alleged events was ever presented to the Board. The tenure charges were certified on the basis of double hearsay. It is troubling that the recommendations by the independent advisory association, to have signed statements by the students and parents and to have the Superintendent interview the students, were never followed.

In order for a school district to certify tenure charges it must provide a clear statement of the facts including the time and dates when the alleged incidents occurred. King requires that tenure charges, "state a time, or the alleged dates of the violations." But the Petitioner's tenure charge fails to allege any dates at all, not even a year. Moreover, some of the allegations in the tenure charge, e.g. Karp made "cat calls" are so vague as to be meaningless. What exactly was said? Was this a whistle? One of the alleged victims' the female wrestler, N.T., apparently was never even questioned.¹

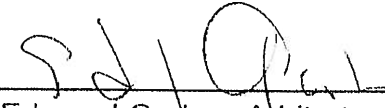
On the basis of the record before me it is evident that the charges filed by the Barnegat Board of Education failed to satisfy N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3-1.6.²

¹ However, the Board's failure to submit the names of the complaining students was not improper. Given that nature of their complaints, it was appropriate to protect their privacy. If the Respondent could not reasonably identify the students through their initials and the specific time and dates of the alleged offences, the Respondent's attorney could have requested a confidential list of the names of the complaining students.

² Having found that the Petitioner's tenure charge fails to meet the requirements of the statute it is not necessary to consider the merits of the Respondent's motion seeking emergent relief.

AWARD

For the reasons contained herein it is hereby ORDERED that the tenure charges lodged against the Respondent Kevin Karp be DISMISSED, without prejudice, and that he forthwith be restored to his position as a schoolteacher with all salary and emoluments to which he would be entitled had charges not been filed against him.


Edmund Gerber, Arbitrator
May 26, 2016