

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of the Tenure Hearing of:

**JOSEPH DeSHAN, BOARD OF EDUCATION
OF THE TOWNSHIP OF CINNAMINSON,
BURLINGTON COUNTY**

Agency Docket No. 311-12/18

Walt De Treux, Esq., Arbitrator

**DECISION ON RESPONDENT'S
MOTION TO DISMISS**

Decision Date: 4/2/19

Introduction and Statement of Relevant Facts

Joseph DeShan has been a teacher at Cinnaminson Middle School and Rush Elementary School in the Cinnaminson School District for approximately 22 years. Prior to his employment with the District, DeShan was a Roman Catholic priest in the Bridgeport, Connecticut Diocese. In 1988, he had a sexual relationship with a 14-year old female. A child was born from their relationship in 1990 when the female was 16 years old. DeShan left the priesthood around 1994 and became a Cinnaminson school teacher in 1996.

In 2002, Connecticut newspapers reported on DeShan's relationship with the minor. On April 12, 2002, the Cinnaminson Board of Education (BOE), previously unaware of the relationship and DeShan's former vocation as a priest, placed DeShan on administrative suspension. Three weeks later, he was returned to the classroom with no further discipline or adverse effect on his employment.

On December 20, 2018, the Cinnaminson BOE filed tenure charges against DeShan with the New Jersey Commissioner of Education. The charges moved for DeShan's removal from his position for "Conduct Unbecoming a Staff Member." Specifically, the charges focused on current and past conduct as detailed in the Statement of Evidence, sworn to by Superintendent of Schools Stephen Cappello and stating in relevant part,

"14. On one recent occasion, it was reported that DeShan told a young female student that, "Look at me. Let me see your pretty green eyes. You don't see them too much anymore." The student reported that the comment made her feel "uncomfortable." The student further noted that DeShan made the comment in a "weird voice."

15. Many parents have come forward requesting that their children be removed from DeShan's class.

16. Parents with children in the District came forward at the October 16, 2018 School Board Meeting to express their serious concern with DeShan remaining in the classroom, including:

- a. Because of DeShan's prior conduct, students do not trust their teacher, and are talking about their teacher being a "rapist."
- b. Wanting their children to feel safe at all times at school, and a person with his history should not be around children. Requests to "please protect our children."
- c. Child finds teacher "creepy" and parent would her child to be removed from his class if he is to remain in school.
- d. Concerns that the child DeShan had a sexual relationship with was the same age as their children that he is currently teaching.
- e. That DeShan should not be teaching their children because he is a "pedophile."

On January 4, 2019, Respondent DeShan filed a Motion to Dismiss Tenure Charges in Lieu of Answer. On January 17, 2019, I was appointed as Arbitrator to decide the Motion and hear the case, if necessary. The BOE filed a Brief in Opposition on January 30, 2019, and Respondent filed a Reply Brief on March 29, 2019. The Motion to Dismiss is ripe for decision.

Issue

Should Respondent's Motion to Dismiss Tenure Charges be granted?

Analysis and Decision

In his Motion to Dismiss, Respondent argues that the tenure charges are procedurally deficient as they are based on "hearsay, rumor, and innuendo without the necessary residuum of legally competent non-hearsay evidence." The BOE counters that the charges "contained enough information and facts in order for Respondent to articulate a response or defense."

The charges focus on both current and past conduct. The current conduct relates to Respondent's alleged comment to a female student regarding her "pretty green eyes." The past conduct refers to Respondent's pre-employment sexual relationship with a minor while he served as a priest in the Bridgeport, CT Diocese.

TEACHNJ regulations, N.J.A.C. 6A:3-5.1(b)(1), require in relevant part,

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 will be executed under oath by the person(s) instituting such charges.

In the Matter of Tenure Hearing of Kevin Karp, Board of Education of the Township of Barnegat, Ocean County, Agency Docket #102-4/16 (May 26, 2016), Arbitrator Edmund Gerber dismissed tenure charges against the Respondent because the Superintendent swearing to the Statement of Evidence and certifying the tenure charges did not directly participate in the investigation of the allegations, but instead, relied on unsigned documents from school administrators who conducted the investigation and acted without signed statements from

complaining students and parents. He rejected the charges because they were “certified on the basis of double hearsay,” citing the ALJ decision *In the Matter of the Tenure Hearing of Edwards, East Orange Board of Education*, 1982 S.L.D. (2011).

In the present case, Superintendent Cappello certifies in ¶14 of the Statement of Evidence that “it was reported” that Respondent made a comment to a female student regarding her “pretty green eyes.” The paragraph also refers that “the student reported” feeling uncomfortable and that Respondent spoke in a “weird voice.” The allegation provides no further context. It does not explain who reported the comment or to whom the comment was reported. The allegation does not indicate whether Supt. Cappello had personal knowledge of the alleged comment or whether it was investigated by school administration. There are no statements from the female student or notes/transcripts of interviews with the student or others. The tenure charges in ¶13 allege, “DeShan’s prior conduct in addition to present conduct has caused his continued presence in the District to be a substantial disruption to the educational process.” In the Statement of Evidence, the alleged comment to the student is not linked in any way to “substantial disruption to the educational process.” The Statement does not indicate that parents or others were made aware of the alleged comment.

In short, the evidence in support of the current conduct – the alleged comment is the only incident cited – is clearly based on hearsay. The layers of hearsay are impossible to determine as the allegation does not indicate how and from whom school administration learned of the comment. Supt. Cappello certified the charges at least on the basis of hearsay, if not double or triple hearsay. For this reason alone, the tenure charges are procedurally deficient.

The BOE argues that Respondent had enough information to understand and respond to the allegation. Respondent did, as he provided a narrative of the event in his Motion to Dismiss; but the BOE's argument distracts from the reasons that charges are required to be supported by competent non-hearsay evidence. The procedural protections ensure that charges comply with due process. It is not the comment itself that appears to be the primary basis for the charges, but the student's alleged reaction to the comment. Respondent's proffered context for the comment strips it of any inappropriate interpretation. The BOE, to the contrary, insinuates that the comment was laced with improper intentions and sexual connotations. Yet it provides no non-hearsay evidence of the basis for that implication. A description of the student's reaction (feeling "uncomfortable") without any indication to whom, if anyone, she reported that reaction or to how the alleged comment and reaction came to the Superintendent's attention (i.e., the number of persons the account was passed through before he learned of it) gives Respondent no opportunity to properly respond to the allegation or to rebut those unknown persons that may have reported or passed on the alleged comment and description of the student's reaction.

For all these reasons, I find that the charges as they relate to alleged current conduct, i.e., the one alleged comment to the female student, are based on hearsay, and therefore, are procedurally deficient and must be dismissed.

The BOE first learned of Respondent's prior employment as a priest and his pre-employment sexual relationship with a minor in 2002. After a 3-week administrative suspension, the BOE returned him to the classroom.

In the tenure charges, the BOE is not alleging that Respondent has engaged in any other past conduct other than the pre-employment conduct. It argues that parental and societal views have changed so that the past conduct now renders Respondent unfit for the classroom. The Statement of Evidence cites to parents' comments at a Board meeting, decrying Respondent and questioning the safety of their children. The speakers of those comments are unidentified, and their comments are clearly hearsay. The larger point, however, is that the BOE is relying on the attitudes of some parents toward Respondent's past conduct to support the tenure charges alleging Conduct Unbecoming a Staff Member.

In *Bound Brook Board of Education v. Ciripompa*, 153 A.2d 931, 228 N.J. 4 (2017), the New Jersey Supreme Court reviewed the standard applied to a claim of unbecoming conduct. As part of a longer discussion, the Court observed,

"A charge of unbecoming conduct requires only evidence of inappropriate conduct by teaching professionals. It focuses on the morale, efficiency, and public perception of an entity, and how those concerns are harmed by allowing teachers to behave inappropriately while holding public employment." At 938.

The BOE has not alleged that Respondent engaged in any inappropriate conduct *while* holding public employment. Rather, it cites conduct prior to his employment for the District and for which it had administratively suspended, investigated, and returned him to the classroom more than 16 years ago. The fact that some parents now demand his removal from the classroom does not give the BOE a second opportunity to revisit pre-employment conduct of which it has been long aware. The charges do not cite to inappropriate conduct other than conduct that was already addressed by the Board in 2002 when it learned of the pre-employment conduct.

As the conduct unbecoming charges are based on alleged hearsay complaints from parents and on pre-employment conduct that was addressed by the BOE 16 years ago , I find the tenure charges as to past conduct procedurally deficient and insufficient to support a charge of Conduct Unbecoming a Staff Member.

For these reasons, the charges will be dismissed.

Award and Remedy

Respondent's Motion to Dismiss Tenure Charges is granted, and the tenure charges are dismissed. As remedy, the BOE is ordered to immediately reinstate Respondent to his former position with full backpay, benefits, and all emoluments associated therewith, as required by law and consistent with the operative collective bargaining agreement.

Walt De Treux

WALT De TREUX

Affirmation

I, Walt De Treux, affirm that I am the individual who executed this Decision and Award.

Walt De Treux

WALT De TREUX