

IN THE MATTER OF THE TENURE :
HEARING OF ADAM MUJICA, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF PATERSON, PASSAIC :
COUNTY. :

SYNOPSIS

Board certified tenure charges against respondent teacher alleging that he had, on numerous occasions, made sexually inappropriate remarks and gestures to students including commenting on female students' bodies, discussed his personal sex life, discussed the sexual aspects of a television program and addressed female students by the name of the title character, made sexual gestures and squeezed a sexual toy during class. In addition, respondent was alleged to have sexually harassed a female teacher by grabbing and squeezing her legs, made remarks in class about female students who had reported his inappropriate behavior in an attempt to intimidate them and approached a student after his suspension and attempted to convince her not to testify against him. Respondent denied all charges, and argued that the charges and testimony against him were motivated by a plot conceived by the physical education department to have him terminated from his position.

After hearing extensive testimony and argument and assessing the credibility of the witnesses, the ALJ concluded that the Board's witnesses were credible and that it had proven Charges one through five and eight, that Charge seven had been partially proven, and that Charges six and nine should be dismissed. The ALJ further determined that the charges that were sustained constituted conduct unbecoming a teaching staff member and, because of the nature of the charges, recommended dismissal of respondent.

Upon review of the Initial Decision, transcripts and evidence submitted, the Commissioner agreed with and adopted the determination of the ALJ that the Board had sustained most of its charges by a preponderance of the evidence. Based on the nature of the proven charges, involving sexually inappropriate statements and gestures, as well as actions intended to dissuade students from testifying against him, the Commissioner determined to dismiss respondent from his teaching position. The Commissioner noted several past incidents of inappropriate conduct by respondent, and the fact that he was specifically warned by the Board in 1995 that future inappropriate conduct of a sexual nature would result in tenure charges against him, in support of this determination that dismissal, rather than a lesser penalty, was appropriate in this case.

September 7, 2001

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions, which included a Motion to Reopen the Record, and the District’s reply thereto, were submitted in accordance with *N.J.A.C.* 1:1-18.4 and *N.J.A.C.* 1:1-18.5.

MOTION TO REOPEN THE RECORD

Respondent contends that the record in this matter should be reopened to admit his “newly-discovered” evidence that reveals the District’s motives to remove him for improper reasons. (Respondent’s Exceptions and Memorandum in Support of Motion at 49) Specifically, respondent requests that the Commissioner consider recently acquired witness statements, in that they provide:

context, meaning and a motive to both (a) the prior testimony at hearing; and (b) the actions of Paterson officials, who seek to have [him] removed from his tenured teaching position on the verge of his retirement after almost twenty five years of service to the School District. (*Id.* at 49)

Respondent claims that these statements were not available to him until after the close of the hearing, and that they “go to the illegality of the District’s action ***.” (*Ibid.*) Respondent further alleges that the District’s certification of a second set of charges to the Commissioner

during the pendency of the hearing before Administrative Law Judge (ALJ) Hayden, wherein such charges were based on incidents dating back as far as 16 years, “impermissibly tainted her ruling through the unmistakable implication that ‘where there is smoke there must be fire.’” (*Id.* at 51-52)¹

In support of his motion, respondent cites *In the Matter of the Tenure Hearing of Gregory Brewer, School District of Roselle, Union County*, decided by the Commissioner December 11, 2000, wherein the Commissioner granted respondent Brewer’s Motion to Reopen the Record based upon his finding that the ALJ’s credibility determinations, which were crucial to the outcome of the tenure matter, “were based, in part, on facts not supported by evidence in the record.” (*Id.* at 8-9, *citing Brewer* slip. op. at 34) In this regard, respondent contends that the ALJ failed to make proper factual and demeanor findings and that recently discovered evidence supports a reopening of this case. “New witnesses,” the respondent affirms, “are prepared to provide a compelling look at the motive behind petitioner’s conduct and further assist the ALJ in regard to her credibility determinations.” (*Id.* at 11) Respondent reasons that this newly discovered evidence provides “a clear insight into the motives of the District, and adds substantial additional credibility to the many witnesses who testified on [his] behalf.” (*Id.* at 57)

In reply, the District asserts that respondent has failed to show good cause and reasonable diligence in making his application to reopen the record. As the District argues, respondent offers “no explanation why this motion was not made soon after the hearing ended on April 17, 2001 or before the ALJ issued her July 20, 2001 decision.” (District’s Reply at 9-10) Specifically, respondent appends to his motion the same 16 witness statements that have already

¹ Respondent further requests that the Commissioner consider an Interlocutory Order issued on July 13, 2001 by ALJ Giordano, who is currently hearing the matter entitled *In the Matter of the Tenure Hearing of Adam Mujica, State-operated School District of Paterson, Passaic County*, OAL Dkt. No. EDU 5184-01, wherein the District brought a second set of tenure charges against respondent based upon incidents alleged to have occurred in 1985 and 1994, since ALJ Giordano dismisses the charges dating back 16 years as reflective of bad faith. (*Id.* at 51, 54)

been submitted into evidence. As to the five additional certifications appended to the motion,² the District notes that: one of them is from Fernando Montanez, respondent's friend, who already testified at the hearing; all "contain old conspiracy allegations not relevant to the October 2000 Charges" (*id.* at 10); and respondent's "conspiracy" theory is *not* new evidence, but an attempt to raise old allegations. "The respondent has failed to explain why after an extensive discovery period, and 11 contentious hearing days, he failed to produce the so-called new witnesses or offer new evidence." (*Id.* at 10-11) Finally, the District argues that this matter is distinguishable from *Brewer*, wherein "the Commissioner found that the ALJ's determinations with respect to the teacher's credibility were based upon facts not in the record [and wherein] the teacher's counsel wrote to the school district's attorney before the hearing ended about presenting rebuttal testimony on a contested issue of student grades." (*Id.* at 11)

COMMISSIONER'S DETERMINATION ON THE MOTION TO REOPEN THE RECORD

Having thoroughly and carefully reviewed each of the transcripts for the 11 days of hearing in this matter, together with all documentary evidence on record, the Commissioner finds that, contrary to the situation in *Brewer*, each and every credibility determination issued by the ALJ *is* grounded in the record before her. Further, the record provides no basis for concluding that a reopening of this matter is warranted; there appears to be no reason why the motivational theory respondent now proposes to advance was impossible to develop, with reasonable diligence, prior to the close of the record. Even accepting, *arguendo*, that respondent only learned "around the beginning of May *** [that certain] individuals had relevant and important information which might assist [him] ***" in defending these charges, the Commissioner notes that the record did not close until June 5, 2001, thereby affording respondent and his counsel sufficient opportunity to, at minimum, alert the District and the

² Although the District notes that there are four certifications, there are actually certifications from five persons.

Office of Administrative Law of their “discovery.” (Respondent’s Exceptions and Memorandum, Certification of Adam Mujica, August 7, 2001, at 2) Under these circumstances, the Commissioner cannot find that respondent was denied an opportunity for a full and fair hearing or that principles of fundamental fairness were compromised. Accordingly, respondent’s Motion to Reopen the Record is denied.

RESPONDENT’S EXCEPTIONS TO THE INITIAL DECISION

Respondent’s exceptions essentially challenge the ALJ’s consideration of witnesses’ motives and the ALJ’s resultant credibility assessments in the Initial Decision. He asserts, *inter alia*, that the ALJ failed to make adequate and necessary findings of fact or to make demeanor observations potentially worthy of deference. (Respondent’s Exceptions and Memorandum at 11) In this connection, respondent underscores the testimony of his witnesses and asserts that the ALJ “summarily dismissed entire witnesses without even naming them, let alone recounting the demeanor, alleged inconsistencies, and/or purported motive to lie of each one, as required.” (*Id.* at 17) Rejecting this testimony, respondent posits, is tantamount to finding that they all lied under oath and committed perjury. (*Id.* at 17-18) Mindful that a 23-year teaching career “hangs in the balance,” respondent urges that:

[T]his Department, the Third Circuit, and many other Courts require more on the part of an ALJ than [sic] a one sentence dismissal of the testimony of these *** witnesses. ***

***Fundamental fairness and due process requires [sic] that the ALJ provide basic findings of fact -- exactly how did each witness lie, why did *that* witness lie, what physical demeanor observations made it clear *that* witness was lying -- so that a reviewing tribunal or Court may glean the precise basis for the determination that has been rendered. (emphasis in text) (*Id.* at 18-19)

Respondent also asserts that despite the ALJ’s indication that she fully credited the testimony of Stanford Kushner, Chairperson of the Social Studies Department, she failed to review key

components of his testimony, which includes his affirmation that he never saw anything inappropriate going on in respondent's classroom. (*Id.* at 21-22)

Respondent next challenges the ALJ's refusal to permit testimony or arguments of a Constitutional law or due process nature, as well as her refusal to consider the violation of respondent's Constitutional rights or its impact on the charges "constructed" by the District. (*Id.* at 24) Respondent contends that he repeatedly requested that the ALJ consider his arguments of Constitutional dimension, but the ALJ would not permit him to explore such issues, finding, instead, that the within proceeding was a *de novo* hearing rather than a review of a local district's action to determine whether that action was arbitrary, capricious and unreasonable. (*Id.* at 25-26) Respondent notes that he repeatedly argued before the ALJ that "at some point the procedures used [and] the method employed could be so egregious as to eclipse the conduct alleged and taint the process ***; and that justice would require a dismissal." (*Id.* at 28) Yet, respondent continues, the ALJ's recommendation "shows that she heard the testimony with a mindset successfully established by the taint of sensationalist charges that never should have been brought, and resurrected claims from decades past." (*Id.* at 29) Thus, respondent maintains that the Constitution requires a "probing analysis" of the circumstances under which these charges were brought. (*Ibid.*)

Respondent next argues that the ALJ's finding as to Charge Eight is wholly unsupported by the record and such finding constitutes misinterpretation of the law. Respondent notes that the ALJ stated, with regard to respondent's attempts to manipulate one of his students not to testify against him, "This one act in itself must be seen as a violation of an implicit standard of good behavior and extremely egregious conduct for a teacher to engage in." (*Id.* at 34, *citing* the Initial Decision at 43) Thus, respondent reasons that the ALJ "in large measure"

grounds her decision to recommend his termination upon her finding that he attempted to encourage V.D. not to cooperate and to refuse to testify against him, if asked. However, respondent argues that this finding is not supported by V.D.'s testimony or the testimony of Principal Robert Howell, Sr. (*Ibid.*) Furthermore, respondent argues that he has a right as a "defendant" to communicate with a witness in order to defend himself from serious charges, and he characterizes such communication as "innocuous conversation," rather than "witness tampering." (*Id.* at 34-35) Respondent, therefore concludes: (1) there is no evidence on the record to suggest that he urged V.D. not to cooperate or testify; and (2) if, *arguendo*, all or part of the District's allegations were true, "there is absolutely nothing improper about [his] talking to a witness and seeking a helpful statement or even a fuller measure of cooperation." (*Id.* at 37)

Respondent additionally claims that the ALJ improperly dismissed the significance of his theory that Ms. Sanchez and/or her Eastside High School Gym Department, "were shown to be at the genesis of each allegation of impropriety by [him]." (*Id.* at 39) Respondent maintains that Ms. Sanchez had a "strong motive" to harm him, (*ibid.*) and concludes that:

The only reasonable inference that can be drawn is that Mrs. Sanchez, already angry at [him] for reporting her collection activities, did her best to retaliate. Her allies were other students who disliked [him]. Her target was his perceived area of vulnerability from charges frivolously lodged during the initial "get" Adam era, now verified by a high-ranking Administration official." (*Id.* at 43)

He urges that it was simply erroneous for the ALJ to conclude that the alleged money-collection activities were "trivial." (*Id.* at 47)

Finally, respondent argues that the ALJ's recommended penalty is disproportionate to the alleged violation, and asserts that the ALJ ignores an entire body of case

law suggesting that offenses such as those that he is alleged to have committed “are not worthy of a penalty as drastic as termination after 23 years of service to the School District.” (*Id.* at 58) In support of this position, respondent cites to the decision in *In the Matter of the Tenure Hearing of Henry Allegretti, School District of the City of Trenton*, decided by the Commissioner March 22, 2000, *aff’d* State Board August 2, 2001, wherein the respondent was not dismissed from his tenured teaching position, notwithstanding a finding that he had engaged in unbecoming conduct of a sexual nature. Respondent reasons that the conduct charged to Allegretti “is vastly more serious than that which [he] is accused of.” (*Id.* at 59)

PETITIONER’S REPLY

The District argues, in reply, that the Commissioner should affirm the finding in the Initial Decision that it has proven seven of the nine charges. The District underscores that as the factfinder, the ALJ “had the opportunity to observe the witnesses and take note of their demeanor during testimony. [As such] [h]er observations as to credibility should be given substantial weight.” (District’s Reply at 3) Moreover, the District contends that respondent failed to present a complete analysis of the evidence that the ALJ properly relied upon to sustain the seven charges. Specifically, “Judge Hayden declared the testimony of students GA, MC, VD and JT to be ‘consistent, forthright, and credible.’” (*Id.* at 4, *citing* the Initial Decision at 37)

Further, contrary to respondent’s assertion that the ALJ ignored crucial facts, the District argues that the ALJ carefully summarized the witnesses’ testimony:

The respondent’s “revenge” theory that MC and GA were out to get him was properly rejected. *** Other students who had no alleged “revenge motive” corroborated the allegations of MC and GA. Students VD and JT testified about the numerous inappropriate actions of the respondent ***.” (*Id.* at 5)

As to respondent's contention that the ALJ erred in sustaining Charge Eight, the District counters that this charge "is supported by credible and legally sufficient evidence.***" (*Ibid.*) Since the court found V.D.'s testimony credible, the ALJ "correctly inferred that by having a telephone conversation with V.D. while on suspension from school, and causing her to feel 'bad,' the respondent intended to persuade V.D. not to cooperate." (*Id.* at 6) The District notes that *N.J.A.C.* 1:1-15.5(b) requires "some legally competent evidence *** to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the appearance of arbitrariness." (*Id.* at 6, *citing N.J.A.C.* 1:1-15.5(b))

Turning to respondent's contention that the ALJ ignored his Constitutional claims, the District argues that:

[T]he respondent suggests that in this case, the mere filing of tenure charges by the District pursuant to N.J.S.A. 18A:6-10 & 11, caused constitutional violations. The respondent's position is unsupported. In *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967), the court stated that the board's authority with respect to tenure charges is specifically limited to that of a preliminary review ***." (*Ibid.*)

This and other cases, the District advances, support the principle that the Board is not required to adjudicate tenure charges filed against an employee, but to consider the written statement of evidence as submitted, as well as the employee's statement, and to determine, pursuant to *N.J.S.A.* 18A:6-11, whether there is probable cause to credit such evidence. (*Id.* at 6-7, *citing In the Matter of the Tenure Hearing of Deborah Suitt-Green, State-operated School District of the City of Newark*, decided by the Commissioner October 14, 1997, *aff'd* State Board February 17, 1998, *aff'd* App. Div. A-3918-97T1 (February 17, 1999)) Thus, the District reasons, respondent's arguments attacking the quality of its investigation, as well as the DYFS investigation, are misplaced, and the ALJ properly focused upon the District's burden to prove

the charges. (*Id.* at 7 and 8) Moreover, the District denies that it acted unfairly or violated respondent's rights with respect to these charges. (*Id.* at 7)

Finally, the District contends that the ALJ correctly recommended respondent's termination based upon the proven charges. Here, the District argues, that the Commissioner has dismissed teachers for unbecoming conduct toward female students. In support of this, the District cites to, among others, the Commissioner's decisions in *In the Matter of the Tenure Hearing of Nicholas Ciufi, Board of Education of the Township of Irvington, Essex County*, 96 N.J.A.R.2d (EDU) 980; *In the Matter of the Tenure Hearing of George McClelland, School District of Washington Township, Mercer County*, 1983 S.L.D. 225, *aff'd* State Board 1983 S.L.D. 247, *aff'd* App. Div. 1984 S.L.D. 1964; and *In the Matter of the Tenure Hearing of Donald Henley, School District of the City of Camden, Camden County*, 1979 S.L.D. 356. Thus, the District urges the Commissioner to affirm the recommended decision of the ALJ in that she produced "a thorough and well reasoned decision that properly considered all testimony and evidence presented***." (District's Reply at 1)

COMMISSIONER'S DETERMINATION

Upon careful and independent review of the complete record in this matter, including transcripts from each of 11 days of hearing,³ together with exhibits, posthearing briefs, exception and reply arguments, the Commissioner determines to affirm the Initial Decision of the ALJ for the reasons set forth below.

The parties recognize, as did the ALJ, that this matter turns on the issue of the credibility of the witnesses, many of whom were students. In this regard, the Commissioner is satisfied that the ALJ's recitation of testimony is both accurate and thorough, and that she carefully measured conflicts, inconsistencies and potential biases in deciding which testimony to

³ The hearing was conducted on April 2, 3, 4, 5, 6, 9, 10, 11, 12, 16, and 17, 2001.

credit. See *In the Matter of the Tenure Hearing of Frank Roberts, School District of the City of Trenton, Mercer County*, 94 N.J.A.R.2d (EDU) 284, 294, *aff'd* 95 N.J.A.R.2d (EDU) 349, *aff'd* App. Div. 96 N.J.A.R.2d (EDU) 549. The Commissioner finds that “[t]he ALJ carefully scrutinized the students’ testimony recognizing that the case hinged on the issue of credibility.” (96 N.J.A.R.2d (EDU) at 549)

As the District correctly observes, the ALJ’s credibility determination is entitled to the Commissioner’s deference. “The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility. *In the Matter of the Tenure Hearing of Tyler*, 236 N.J. Super. 478, 485 (App. Div.) *certif. denied*, 121 N.J. 615 [1990].” *In the Matter of the Tenure Hearing of Frank Roberts, supra*, at 550. The Appellate Division recently affirmed this principle, underscoring that “[u]nder existing law, the [reviewing agency] must recognize and give 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 No. A-5978-98T2 (App. Div. 2000), slip op. at 14. The Court also noted *then pending* legislation providing that “the agency head may not reject or modify any findings of fact on the issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” (*Ibid. citing* A. 1484, 209th Leg., §10(b), later enacted as *P.L. 2001, c. 5* and now codified at *N.J.S.A. 52:14B-10(c)*)

Further, contrary to respondent’s assertion, the Commissioner determines that the findings issued by the ALJ provide him with a sufficient basis for reviewing her conclusions and recommendations. In this connection, the Commissioner recognizes that “the ultimate

determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them." *State, Dept. of Health v. Tegnazian*, 194 N.J. Super. 435 at 442, 443. The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor." (*Id.* at 443) Additionally,

the sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts "to read only one side of the case and, if they find any evidence there, the administrative action is to be sustained and the record to the contrary is to be ignored." (citation omitted) (*St. Vincent's Hospital v. Finley*, 154 N.J. Super. 24, 31 (App. Div. 1977))

Here, the Commissioner notes that the ALJ fairly summarizes the testimony and evidence on both sides, explaining how she weighed the proofs before her and why she credited, or discredited, certain testimony.⁴ Each of the ALJ's conclusions is clearly aligned and consistent with those credibility determinations.⁵ As such, the Commissioner finds that he can ascertain which testimony the ALJ accepted as fact, and further determines that these facts provide a reasonable basis for her conclusions.⁶

Additionally, the Commissioner is not persuaded by respondent's contention that the ALJ erred in denying him the opportunity to pursue in this forum his procedural due process claims regarding the District's investigation of this matter prior to the certification of tenure

⁴ This includes, the Commissioner notes, the ALJ's proper rejection of respondent's theory that the within charges were, either in whole or on part, generated by the need of either Ms. Sanchez (now Mrs. Fernandez) or the Physical Education Department to retaliate against him.

⁵ Contrary to respondent's urging, this is also true of the ALJ's conclusion with respect to Charge Eight, *i.e.*, that the District proved by a preponderance of credible evidence that respondent encouraged V.D. not to cooperate or to testify, if asked. (Initial Decision at 41-42)

⁶ *Contrast, Pitts v. N.J. Racing Comm'n.*, 185 N.J. Super. 190, 196 (App. Div. 1982), wherein, notwithstanding that a hearing was conducted before the Racing Commission which included witness testimony, videotapes and photographic evidence, the Commission issued a decision "entirely lacking in findings and conclusions***" so as to render its decision "of no use" to the Court in its administrative review.

charges to the Commissioner.⁷ The Commissioner concurs with the District's view that its role in this matter, prior to certification of tenure charges, is one of issuing a "preliminary determination." See *In re Fulcomer*, 93 N.J. Super. 404, 410 (App. Div. 1967).⁸ Whereas, the Commissioner, by contrast, has jurisdiction to conduct the hearing and issue a decision on the charges in the first instance; *his jurisdiction is not appellate, but primary.* (*Id.* at 412) The Commissioner declines to find, therefore, that the ALJ's careful attention to gathering evidence relevant to the veracity of the charges was erroneous, as her rulings indicate:

I don't look at whether they were acting arbitrary and capriciously. I make a finding De Novo. In the general civil service law, lack of due process at a prior hearing, isn't even taken into consideration as long as there's due process at the hearing that makes the decision.*** (Tr. (4/3/01) at 92-93)

This is a hearing De Novo. In other words,-- the reason why I'm trying to stop you is that I think we're going to take a lot of time on extraneous matter. I understand what you're saying and to some extent I've allowed it to go on because if they didn't do a very good job or a tiptop job, it really goes to the weight of the evidence that I'm going to consider. *** (*Id.* at 94)

Moreover, the ALJ's Prehearing Order setting forth the issues to be resolved does not include respondent's procedural due process claims and he was, therefore, on notice as to the parameters of the hearing before the ALJ.⁹

⁷ The Commissioner notes that respondent's Answer to the Tenure Charges does not raise any *substantive* Constitutional defenses. (Respondent's Statement in Opposition to Charges, December 5, 2000)

⁸ Under the Tenure Employees Hearing Act, a local board or district is limited to determining whether there is probable cause to credit the written charges and supporting evidence presented to it and, where the board or district "finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing***." *N.J.S.A.* 18A:6-11.

⁹ Rather, the Prehearing Order identifies the following issues to be resolved at hearing: (1) Whether the District's evidence establishes that respondent engaged in conduct unbecoming a teacher or insubordination; (2) Whether the charges are procedurally defective as failing to set forth with specificity the conduct alleged; and (3) If the District proves the charges, what should be the penalty? (Prehearing Order, January 9, 2001 at 1)

The Commissioner, therefore, affirms the ALJ's conclusion that the District has proven Charges One, Two, Four, Five and Eight and has partially proven Charges Three and Seven, for the reasons set forth in the Initial Decision at pages 40-42.¹⁰ Each of these charges establishes that respondent is guilty of conduct unbecoming a teaching staff member.

PENALTY

In affirming the conclusions of the ALJ, the Commissioner is ever mindful that this matter, as with many controversies that come before him, is fraught with grave consequences for respondent. *Tegnazian, supra*, 194 N.J. Super. at 440. However, the ALJ reaches the disturbing conclusion, and the Commissioner so affirms, that:

The sustained charges showed that in at least the first, fifth and seventh period classes, Mr. Mujica routinely talked about sexual issues in the class and routinely made inappropriate sexual gestures and inappropriate sexual remarks over much of the school year. Such behavior sets a very poor example and demonstrates a lack of respect for the students in the class. (Initial Decision at 43)

The Commissioner has dismissed tenured teaching staff members for conduct largely centered on inappropriate comments of a sexual nature directed to students. *See In the Matter of the Tenure Hearing of Roberts, supra*, wherein respondent was found to have spoken openly about sex, at times crudely, to have discussed his personal experiences and probed the conduct of his students, to have initiated monologues about sex, and to have commented on the sex lives and physical features of his students; *In the Matter of the Tenure Hearing of Sheridan*, 92 N.J.A.R.2d (EDU) 257, *aff'd* State Board 92 N.J.A.R 2d (EDU) 393, wherein respondent was found to have used profanity in the presence of students, to have made derogatory remarks about women, to have made improper sexual references to students' bodies, and to have inferred that he was in a relationship with a student; and *In the Matter of the Tenure Hearing of Van Gilson*,

¹⁰ The ALJ found, and the Commissioner concurs, that Charge Six was not substantiated and Charge Nine was properly dismissed. (Initial Decision at 41, 42) (Tr. (4/10/01) at 11)

93 *N.J.A.R.2d* (EDU) 378, 382, 385, *aff'd* State Board 93 *N.J.A.R.2d* (EDU) 630, wherein respondent was found to have verbally abused and ridiculed a classified pupil in class, to have made derogatory and belittling comments to students, to have commented about a seventh grader's "hooters" and said "If I were 30 years younger, I would be after you," to have used profanity when talking to a student, and to have discussed personal matters regarding his wife and their divorce with his students.

Indeed, the Commissioner has also dismissed tenured teaching staff members for conduct that included inappropriate comments, even where such comments were *not* necessarily of a sexual nature. See *In the Matter of the Tenure Hearing of Henry Komorowski, State-operated School District of the City of Jersey City, Hudson County*, decided by the Commissioner July 27, 2000, *aff'd* State Board December 6, 2000, wherein respondent was found to have engaged in graphic discussions with fifth grade students regarding torturing and killing one of the students in his class; and *In the Matter of the Tenure Hearing of Ward Campbell*, 93 *N.J.A.R.2d* (EDU) 196, *aff'd* State Board 93 *N.J.A.R.2d* (EDU) 604, *aff'd* App. Div. 95 *N.J.A.R.2d* (EDU) 211, wherein respondent was found, *inter alia*, to have made racist remarks to students in class, to have commented that "girls can be stupid" to a student, to have told students that he's been known "to hit kids," and to have engaged in a pattern of unprofessional conduct with parents, students and administrators generating numerous complaints, in spite of many prior warnings from administration. (93 *N.J.A.R.2d* (EDU) at 207, 208)

Here, respondent does not have an unblemished record, notwithstanding that he has received positive performance evaluations as a teacher.¹¹ Specifically, the record shows that

¹¹ Exhibits R-117 through R-121 are observation reports dating between February 5, 1997 and February 25, 1999, indicating that respondent received "good," "very good," and "excellent" ratings as a teacher.

in 1985, he was suspended by then Principal Joe Clark pending investigation of allegations of inappropriate “verbal and physical behavior” toward students. (Exhibit P-10) In 1994, allegations were again made against respondent, resulting in a letter from the Division of Youth and Family Services’ Institutional Abuse Unit to respondent, dated June 28, 1995, indicating that, upon investigation, “sexual abuse was unsubstantiated with concerns.” (Exhibit P-33, Letter from Antonio Villegas and Leonard Brazaitis at 1) Thereafter, by letter dated July 19, 1995, then Principal Charles Lighty, provided the following warning to respondent:

The Paterson Public School District is in receipt of correspondence from D.Y.F.U.S. [sic] regarding the 1994 allegations against you.

Based on the fact that this was not the first offense, let this letter serve as a warning that, if similar allegations are made against you again, you will be terminated for conduct unbecoming a teacher. (Exhibit P-11)

Under these circumstances, and based on a record before him which substantiates that respondent made not only unacceptable comments to his students, but also inappropriate gestures, the Commissioner concurs with the ALJ that respondent’s conduct demonstrates unfitness to remain a teacher.¹²

Accordingly, the Initial Decision of the ALJ is affirmed for the reasons expressed therein and amplified above. Respondent is deemed dismissed from his tenured teaching position in the State-operated School District of the City of Paterson as of the date of this decision. In view of the nature of the charges, this matter is hereby referred to the State Board of

¹² *Contrast, In the Matter of the Tenure Hearing of Henry Allegretti, supra*, wherein respondent’s lengthy and unblemished history mitigated against the extreme penalty of loss of his tenure.

Examiners for action against respondent's certificate as it deems appropriate.

IT IS SO ORDERED.¹³

COMMISSIONER OF EDUCATION

Date of Decision: 9/7/01

Date of Mailing: 9/10/01

¹³ This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.