

IN THE MATTER OF THE TENURE HEARING :
 OF MAXINE KING, SCHOOL DISTRICT OF : COMMISSIONER OF EDUCATION
 OLD BRIDGE TOWNSHIP, MIDDLESEX : DECISION
 COUNTY. :
 _____ :

SYNOPSIS

The Board certified tenure charges of unbecoming conduct, inefficiency, incapacity and insubordination against respondent art teacher. Respondent contended that the Board was retaliating against her for filing a Workers' Compensation claim or a Law Against Discrimination case due to her disability, Reactive Airways Dysfunction Syndrome (RADS).

Following consideration of extensive testimony at hearing and review of the record, the ALJ found that the Board made reasonable accommodations for respondent's RADS condition and that there was no convincing proof presented that the charges were filed in retaliation for her complaints. Moreover, the ALJ found that respondent's actions constituted conduct unbecoming a teacher because: she made several inappropriate remarks about her students; she engaged in threatening and unacceptable behavior toward students; she used profanity; and she employed an inappropriate, rigid and punitive method of student discipline. As to the charge of insubordination, the ALJ found that respondent's failure to fully comply with administrators' requests and reasonable directives and her reluctance to participate in programs because they created additional work for her constituted insubordination. Citing the courts' decisions in *Laba* and in *Redcay*, the ALJ concluded that in light of the substantial number of incidences of inappropriate conduct and insubordination, the appropriate penalty was removal of respondent from her teaching position.

Having reviewed the record, including transcripts from 12 of the 14 days of hearing, the Commissioner determined that the ALJ's factual findings were well-grounded in the record before her and her credibility determinations were entitled to the Commissioner's deference. The Commissioner concurred with the ALJ that respondent engaged in conduct unbecoming a teaching staff member and insubordination. The Commissioner adopted the findings and determination in the Initial Decision as his own. He ordered respondent dismissed from her tenured teaching position as of the date of this decision and referred this matter to the State Board of Examiners for action against respondent's certificate as it deems appropriate.

February 25, 2002

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent's exceptions and the Board's reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Respondent submits the following exceptions to the recommended decision of the Administrative Law Judge (ALJ): 1) The ALJ has established no basis for finding that K.M. is credible, and thus, that Ms. King made several inappropriate remarks to her which constitute unbecoming conduct (Respondent's Exceptions at 1-3); 2) The ALJ failed to properly consider the testimony in finding that the Board proved its allegation that Ms. King engaged in threatening and unacceptable behavior toward students (*id.* at 3-13); 3) Principal Dennis Kostulakos' testimony that Ms. King used profanity is unsupported, but, assuming *arguendo*, that she did use profanity, a single instance does not constitute unbecoming conduct (*id.* at 14-15); 4) The ALJ improperly concluded that the discipline program utilized by Ms. King constitutes unbecoming conduct (*id.* at 15-16); 5) The ALJ improperly found that Ms. King responded inappropriately when she was denied funding to attend a professional day as requested in her PIP and when she was criticized by her supervisors (*id.* at 16-19); 6) The ALJ erred in finding that the Board proved by the necessary preponderance of the evidence that

Ms. King has engaged in unbecoming conduct (*id.* at 19-21); 7) The ALJ erred by concluding that Ms. King was insubordinate, as the ALJ completely disregarded Ms. King's testimony regarding the insubordination charges (*id.* at 21-25); 8) The ALJ erred in finding that the Board proved by the necessary preponderance of the credible evidence that Ms. King was insubordinate (*id.* at 25-26); and 9) Removal is too harsh a penalty (*id.* at 26).

To these objections, the Board counters that: 1) The ALJ properly found that respondent engaged in unbecoming conduct by virtue of her unprofessional commentary with district parents (Board's Replies at 3); 2) The ALJ properly found that respondent engaged in unbecoming conduct by virtue of her unacceptable behavior toward students (*id.* at 4-12), and respondent's objection thereto is "largely based on the argument that the poor behavior or artistic ability of her young students justified her threatening and unacceptable conduct" (*id.* at 5); 3) The Board has proven, with the credible testimony of Mr. Kostulakos, several incidents involving respondent which, individually, are sufficiently flagrant to warrant dismissal, as well as the testimony of a number of credible witnesses as to less egregious incidents which, taken together, demonstrate a pattern of unbecoming conduct (*id.* at 12-13); 4) The ALJ properly credited the testimony from many witnesses which provided "multiple examples of King's unacceptable practice of enforcing a strict disciplinary system designed to stifle creativity and belittle and embarrass students***" (*id.* at 14); 5) The ALJ properly found that respondent reacted to Mr. Kostulakos on the issue of her PIP with a degree of unprofessionalism that constitutes unbecoming conduct (*id.* at 14-15); 6) The ALJ properly found that the Board has proven that respondent's actions rise to the level of unbecoming conduct a teaching staff member (*id.* at 16-17); 7) The ALJ properly weighed and credited the evidence to conclude that respondent was insubordinate (*id.* at 17-21); 8) The Board has proven that respondent has

engaged in repeated and willful insubordinate conduct (*id.* at 22); and 9) Respondent is properly dismissed from her tenured position (*id.* at 24-27).

Upon careful and independent review of the complete record in this matter, which included transcripts from 12 of the 14 days of hearing, together with exhibits, post-hearing briefs, exception and reply arguments, the Commissioner determines to affirm the Initial Decision of the ALJ.

As the parties recognize, this matter turns on the issue of the credibility of the witnesses. 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 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.

Furthermore, the ALJ's credibility determination is entitled to the Commissioner's deference. "The reason for this 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)*)

The Commissioner further determines that, contrary to respondent’s contentions, the ALJ’s factual findings are well-grounded in the record before him.¹ The Commissioner, therefore, affirms the ALJ’s findings and conclusions that the Board has proven that respondent has engaged in conduct unbecoming a teaching staff member and insubordination, and that respondent has failed to demonstrate that the charges brought against her were initiated in retaliation for her Workers’ Compensation claims or her LAD complaint. (Initial Decision at 35)

With respect to the appropriate penalty, the Commissioner is mindful, in affirming the conclusions of the ALJ, that the consequences for respondent are serious. “Factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the teacher’s prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring. *In the Matter of the Tenure Hearing of Deborah Suitt-Green, State-operated School District of the City of Newark, Essex County*, Commissioner Decision No. 538-97, October 14, 1997, slip. op. at 32, *citing In re Hearing of Ostergren, Franklin School District*, 1966 S.L.D. 185, 187; *In re Hearing of Kittell, Little Silver School District*, 1972 S.L.D. 535, 541; *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967). In the instant matter, notwithstanding

¹ The Commissioner notes that the ALJ interpreted the residuum rule, *N.J.A.C. 1:1-15.5(b)*, to require that the Board present non-hearsay testimony in order to prove its specifications for the unbecoming conduct charge which involve the abuse of students by Mrs. King. (ALJ’s Interlocutory Order, September 22, 2000 at 3) However, to the extent this interpretation does not strictly comport with the Appellate Division’s decision in *In the Matter of the Tenure Hearing of Cowan*, 224 *N.J. Super.* 737, 751 (App. Div. 1988), thereby resulting in holding the Board to a higher standard, the Commissioner finds it unnecessary to modify the ALJ’s findings, since the Board has clearly met the higher burden of proof.

that respondent has never before been disciplined during her lengthy employment with the District, the Commissioner can find scant evidence on this record that would otherwise mitigate against the penalty the Board seeks. Particularly unsettling in this regard is respondent's failure to acknowledge *any* problematic conduct on her part, let alone be repentant for it. Respondent's reactions to the charges sounding in unbecoming conduct ranged from complete denials of the behavior alleged by the Board, as, for instance, in the profanity incident (Tr. 2/7/00 at 29), to rationalizations based on the bad behavior or ill-motives *of others*. Neither does the Commissioner find that the record before him provides any promise that respondent will, in the future, yield to the authority of the administration without continued conflict. Both Dr. Young and Ms. Agoglia were resolute in their view that respondent was not receptive to criticism (Tr. 10/5/02 at 57) and is unwilling to change. (Tr. 11/16/00 at 25) In the course of her testimony Ms. King accused the administration of harassment (Tr. 2/15/01 at 14) biased evaluations (*id.* at 18); manufacturing evidence "for a certain end," (*id.* at 50, 51) soliciting unfavorable letters from parents in order to gather "a thick pile of accusations" against her (*id.* at 63, 99); "gunning" for her with unreasonable budget preparation expectations (*id.* at 124); failing to listen to her concerns because "they were only interested in their agenda," (*id.* at 134); and blaming her for students' behavioral problems, rather than helping her to solve the problem (*id.* at 143). Regarding her refusal to comply with her assigned station for bus duty on the basis of her health concerns, respondent replied, "If someone tells you to jump off a tall building in a single bound you don't have to. Because if you're smart enough to realize you get crushed when you're at the bottom or the street." (*Id.* at 121) Respondent maintained that she was too overburdened with responsibilities to willingly participate in student recognition programs that were a priority in her schools. (*Id.* at 128-129)

As to the numerous complaints received from parents, respondent countered that the parents who had withdrawn their children from her classroom were engaged in a “conspiracy” (Tr. 2/15/00 at 37); that Mrs. M., an “antagonistic parent” was permitted to observe her class to evaluate her performance in order to build a stronger case against her (*id.* at 149); that D.Q., a PTA president, “took advantage of her position,” was trying to make a “fluffy life” for her child, and, therefore, simply did not want her son to accept his school obligations (*id.* at 151, 152); and that, PTA parents, in general, had “political influence” in the school, so that where a problem arises concerning their children, “the teacher’s always wrong but the child is right***.” (*Id.* at 155)

The Commissioner recognizes that “teachers carry a heavy responsibility by their actions and comments in setting examples for the pupils with whom they have contact.” *In the Matter of the Tenure Hearing of Blasko, School District of the Twp. of Cherry Hill, 1980 S.L.D. 987* at 1003. As such, some actions are “so foreign to the expectations of the deeds and actions of a professionally certificated classroom teacher as to raise manifest doubts as to the continued performance of that person in the profession.” (*Ibid.*) Based on the total record before him, the Commissioner finds that removal is the appropriate penalty herein, where respondent has demonstrated an ongoing insensitivity to students and parents, an inability to cooperate with administration, despite “ample opportunity of a reasonable and appropriate nature” to do so, *Scarpignato, supra*, at 336, and, at times, a severe lack of self-control. Moreover, based on this record, it cannot be said that respondent’s behavior is an aberration; nor can it be said that it is more likely than not that such conduct would not be repeated in the future. *See Morris School District Board of Education v. Brady, 92 N.J.A.R.2d (EDU) 410, 420.* Indeed, respondent’s steadfast refusal to accept responsibility for her conduct, as clearly demonstrated by her

testimony, does not portend a positive learning environment for the students entrusted to her care, or a harmonious working relationship with those administrators who supervise her.² As the Board aptly noted, “Administrative attempts to provide King with constructive recommendations for improvement were met with a blanket denial of personal responsibility and the transference of blame to others.***” (Board’s Reply at 23) (citations omitted) Furthermore, as the Board recognizes, respondent’s behavior has created a significant administrative burden to the district, in that

[d]uring the 1999-00 school year alone, [a]dministrators needed to: address parent and student complaints concerning King at least 13 times; hold informal meetings and formal conferences with King on at least 17 occasions; and issue directives and related correspondence to King on at least 18 occasions.*** King fails to offer any credible explanation for this inordinate need for administrative intervention. If King is not dismissed, she will require almost daily oversight in order to ensure that students are no longer subject to punitive and inappropriate disciplinary measures and to ensure that they receive adequate instruction. (*Id.* at 26, 27) (citations omitted)

Accordingly, the Initial Decision of the ALJ is affirmed for the reasons expressed therein and amplified above.³ Respondent is deemed dismissed from her tenured teaching position in the Old Bridge Township School District as of the date of this decision. This matter

² Contrast, *Randolph Twp. Board of Education v. DiPillo*, 93 N.J.A.R.2d (EDU) 13, *aff’d* 95 N.J.A.R.2d (EDU) 206, wherein respondent was charged with unbecoming conduct involving her students, and many persons, including students, parents and colleagues compellingly testified on her behalf. *DiPillo* at 23, 24. Therein, the ALJ was persuaded that “she was and can still be a good teacher who I trust has learned a lot about herself during these proceedings and will in the future take pains to be more in tune to her pupils’ sensitivities and needs if she returns to the classroom.” *Id.* at 24.

³ The Commissioner herein clarifies that, with respect to the ALJ’s Order dated September 22, 2000, he may, under certain circumstances, share concurrent jurisdiction with the Division of Civil Rights. *Hinfey v. Matawan Regional Board of Education*, 77 N.J. 514, 520 (1978).

is hereby referred to the State Board of Examiners for action against respondent's certificate as it deems appropriate.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: 2/25/02

Date of Mailing: 2/27/02

⁴ 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.