

IN THE MATTER OF THE TENURE :
HEARING OF CHANDLER DENNIS, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF SOUTH ORANGE- : DECISION
MAPLEWOOD, ESSEX COUNTY. :
_____ :

SYNOPSIS

The Board certified tenure charges consisting of ten counts of conduct unbecoming against Chandler Dennis – a tenured physics teacher – for alleged inappropriate conduct towards a minor female student, material breach of public trust and professional responsibility, and other just cause.

The ALJ found that respondent was guilty on two counts of conduct unbecoming a teacher, based on: 1) the birthday gift to his minor student, and 2) the clandestine email account he established so that he and his minor student could secretly communicate. The ALJ additionally found that the penalty of removal from respondent’s teaching position too severe a sanction given the circumstances herein; he concluded that only a portion of Charge Four and Charge Five of the certified tenure charges have been sustained, the other charges are dismissed, and the appropriate total penalty for the sustained charges is the forfeiture of seventy days of salary. The ALJ ordered respondent reinstated to his position as a tenured physics teacher, with restoration of any pay or benefits withheld except for the aforesaid seventy-day penalty.

Upon independent review of the record, the Commissioner adopted the Initial Decision with modification as to penalty. The Commissioner ordered that respondent shall not be dismissed from his tenured employment, but shall forfeit the 120 days of salary withheld following certification of tenure charges. In so doing, the Commissioner emphasized the necessity to impress upon respondent the seriousness of the conduct in which he engaged.

<p>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.</p>

May 8, 2008

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The record and Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions and respondent’s reply thereto – submitted in accordance with the prescriptions of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching her decision herein.

The Board excepts to the Administrative Law Judge’s (ALJ) findings and analysis of law on charges 1, 2, 3, 5, 6, 7, 9 and 10, in large measure replicating arguments advanced in its post-hearing submission to the ALJ. It cites extensively to the testimony of its witness, B.S., and advances the analysis and conclusion which – it purports – inevitably result from such testimony, particularly in light of the District’s responsibility to protect its students from predatory behavior before such danger materializes. The Board charges that the ALJ made multiple erroneous legal conclusions to dismiss proven tenure charges because – by arbitrarily analyzing the charges individually rather than in the aggregate – he failed to recognize that each of the charges was part of a larger pattern of suggestive comments, interactions and behaviors that respondent engaged in while attempting to exploit his teacher/student relationship with B.S. It points out that such a clear pattern of conduct placed B.S. in a position of grave danger.

(Board's Exceptions at 17-18) As to penalty, the Board urges that respondent's pattern of predatory behavior warrants no less than termination from his position.

In reply, respondent strongly supports the correctness and propriety of the ALJ's decision:

...when reviewing the Initial Decision and what follows, it is clear that Dennis was judged on what he was shown to have done, rather than what the Board suggests he allegedly attempted, but did not in fact do. The Initial Decision properly reflects the overall assessment of the witnesses' stories in light of its rationality, internal consistency and the manner in which it 'hangs together' with the other evidence. (citation omitted) (Respondent's Reply Exceptions at 7)

Upon a comprehensive review of the record of this matter – which included transcripts of the hearing conducted at the OAL on August 3, 14, September 7, October 15 and November 14, 2007, along with the parties' exception submissions – the Commissioner adopts the recommended decision of the OAL as modified below.

Initially, the Commissioner recognizes that in this, as in all tenure matters, the Board bears the burden of proving each of its charges of unbecoming conduct against respondent by a preponderance of the competent, relevant and credible evidence. The Commissioner further recognizes that the outcome of this particular matter with regard to the proving of the charges is predominantly dependent on witness credibility. This being the case – and the ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before him, and having made findings of fact based upon their testimony – the standard governing the Commissioner's review is clear and unequivocal:

The agency head may not reject or modify any findings of fact as to 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.
(*N.J.S.A. 52:14B-10(c)*)

Upon a reasoned review of the record with this governing standard in mind, the Commissioner cannot conclude that the ALJ's credibility assessments and resultant fact-finding were without the necessary level of support and, as such, the Commissioner must substantially adopt the Initial Decision with regard to the truth of the Board's charges.

In summary, the Commissioner concurs with the ALJ – for the reasons comprehensively presented in his decision – that the Board did not meet its burden of proof of demonstrating unbecoming conduct against respondent on Charge 1, alleging that respondent invited B.S. on a date with him to New York so they could go to a racetrack during the summer of 2007; Charge 2, alleging that respondent offered B.S. Hershey Kisses with the comment that he was giving her the candy in lieu of an actual kiss, which could get him in trouble; Charge 3, alleging that respondent complimented B.S.'s appearance by saying that he liked it when she wore her hair down, that he was jealous when he saw her with a boy, and that he could not wait until she was eighteen; Charge 6, alleging that the establishment of the e-mail account (described in Charge 5) for B.S. without her knowledge or consent constituted a violation of B.S.'s privacy and was a material breach of respondent's professional responsibility; Charge 7, alleging that in connection with the establishment of the e-mail account (described in Charge 5), respondent placed a note in B.S.'s pocketbook which constituted a violation of her privacy; Charge 9, alleging that the events described in Charges 1 to 8 evidence an attempt to create an improper relationship that constituted a breach of the public trust; and Charge 10, alleging that

Charges 1 to 9 collectively constitute a pattern of “sexually inappropriate behavior” that sought to take advantage of the teacher/student relationship.¹

As such, at the completion of fact-finding as to the truth of the Board’s charges, the ALJ concluded – and the Commissioner concurs – that the only sustained charges of unbecoming conduct against respondent was that portion of Charge 4 which alleges that respondent’s sending of a birthday card and gift certificate for a nail salon to B.S. for her birthday was inappropriate and Charge 5 which alleges that respondent created a clandestine e-mail draft communication system exclusively for himself and B.S., and that he composed the message reflected in Exhibit P-3 – excluding the controversial paragraph, the authorship of which the ALJ found, and the Commissioner agrees, has not been established.

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is particularly cognizant that it has long been recognized that – by virtue of the unique position they occupy – educators must be held to an enhanced standard of behavior. As was succinctly stated in *In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional*, 1972 S.L.D. 302, 321

[Teachers] are professional employees to whom the people have entrusted the care and custody of tens of thousands of school children with the hope that this trust will result in the maximum educational growth and development of each individual child. *This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.*
(Emphasis added)

It is without question that establishment of a surreptitious e-mail account to privately communicate with a minor female student and gifting this student with a card and a present for her birthday evidenced inordinately poor judgment on the part of this mature teacher and was

¹ It is noted that Charge 8 was dismissed at the conclusion of the Board’s case at the OAL.

undoubtedly inappropriate, unprofessional, and unbecoming conduct. In fashioning a penalty, the Commissioner finds it necessary to balance the totality of the record here with the need to stress most emphatically to this respondent and to other educators that such behavior cannot be permitted in the school environment. In this regard, the Commissioner is in accord with the ALJ that the charges actually proven in this matter do not warrant the extreme penalty of respondent's dismissal from his tenured position. However, the Commissioner cannot agree with the ALJ that forfeiture of 70 days salary is sufficient to impress upon respondent the seriousness of the conduct in which he engaged. Rather, given the necessity to assure that respondent learns the need for self-restraint, prudence and controlled behavior in his interactions with students under his charge, the Commissioner finds it appropriate here that he suffer the loss of the 120 days of salary withheld, pursuant to *N.J.S.A. 18A:6-14*, following the certification of tenure charges.

Accordingly, the recommended decision of the OAL is adopted for the reasons expressed therein except as to penalty. Respondent shall not be dismissed from his tenured employment, but shall forfeit the 120 days of salary withheld following certification of the within tenure charges.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 8, 2008

Date of Mailing: May 9, 2008

²This decision 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.*

