

#123-10 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :  
HEARING OF FABIO JIMENEZ, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE : DECISION  
TOWNSHIP OF WOODBRIDGE, :  
MIDDLESEX COUNTY. :

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### SYNOPSIS

The Woodbridge Township School District brought tenure charges of conduct unbecoming, insubordination and other just cause against respondent, a tenured custodian. Respondent denied all charges.

The ALJ concluded that the Board proved by a preponderance of the credible and legally competent evidence that respondent, *inter alia*: engaged in a pattern of belligerent conduct towards his co-workers and supervisors, behaved in an objectionable and offensive manner toward a female co-worker, left his assigned post without permission, failed to abide by procedures regarding absences, failed to clean as directed, and flagrantly disregarded workplace rules. The ALJ found that respondent's conduct warranted dismissal from tenured employment.

The Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision as the final decision in this matter. Respondent was dismissed from tenured employment.

<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>
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April 23, 2010

OAL DKT. NO. EDU 9298-09  
AGENCY DKT. NO. 156-7/09

IN THE MATTER OF THE TENURE :  
HEARING OF FABIO JIMENEZ, : COMMISSIONER OF EDUCATION  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the respective exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by respondent and the Board of Education (Board), and the Board's reply to respondent's exceptions.<sup>1</sup>

In its exceptions, the Board substantially reiterates its post-hearing submission at the OAL, urging adoption of the Initial Decision to the extent that the Board's arguments were accepted by the Administrative Law Judge (ALJ), and expansion of the ALJ's findings and conclusions to the extent that these do not reflect the Board's position in full detail.<sup>2</sup> (Board's Exceptions at 1-54)

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<sup>1</sup> By letter dated March 22, 2010, respondent objected to the Board's exceptions on grounds that applicable rule makes no provision for exceptions "in support of" an Initial Decision; by reply dated March 23, 2010, the Board countered that its submission was fully in compliance with law, in that it proposed substantive additions and administrative clarifications to the Initial Decision as well as noting those areas with which the Board agreed. By letter dated March 25, 2010, the Department of Education advised the parties that the Board's exceptions fell within the permissible scope of *N.J.A.C. 1:1-18.4* and, hence, would be considered by the Commissioner in rendering his decision. Respondent did not reply to the Board's exceptions, although afforded the opportunity to do so by both the referenced rule and the Department's March 25, 2010 letter.

<sup>2</sup> The Board notes seven instances of hostility toward supervisors in addition to those specifically found by the ALJ (Board's Exceptions at 12-13); three additional instances of berating and embarrassing co-workers (*Id.* at 15); three additional instances of other unbecoming conduct (*Id.* at 16); two additional instances of insubordination (*Id.* at 17-18); seven additional instances of violating attendance procedures (*Id.* at 20-21); and five additional instances of sexual harassment (*Id.* at 22-23).

Respondent's exceptions similarly reiterate the substance of his post-hearing submission, recasting the arguments therein to support the contention that the ALJ erroneously sustained the Board's charges. (Respondent's Exceptions at 1-27) During the course of such reiteration, respondent particularly asserts that the ALJ: 1) failed to explain, for each charge, why she upheld some specifications and rejected others and further failed to specify the evidence on which she relied in making her determinations (*Id.* at 1-2); 2) failed to deal with inconsistencies in testimony (*Id.* at 8, 13); 3) made findings of fact that do not relate back to the Board's charges as stated (*Id.* at 10), including some on allegations not contained within such charges (*Id.* at 26); and 4) pronounced respondent's leaving of a note in response to removal of his personal items from a locker inappropriate without indicating the basis for so doing (*Id.* at 13-19).

In reply, the Board contends that respondent's exceptions have: 1) mischaracterized the Initial Decision in stating that the ALJ "rejected" some of the tenure charge specifications, when, in fact, not one of the Board's allegations was found untrue (Board's Reply at 3); 2) wrongly asserted that findings were made outside the scope of the Board's charges, when each of the purportedly extraneous incidents is, in fact, incorporated into the Board's July 1, 2009 Statement of Tenure Charges and Statement of Evidence Under Oath and the Board's charges additionally contain broad allegations encompassing "other actions of the same or similar nature" (*Id.* at 3-4); and 3) attacked the ALJ's well-supported credibility determinations by attempting to simply dismiss Board witnesses as "not credible," take testimony out of context, proffer "some outlandish theory" or claim of prejudice as to why a particular witness would lie under oath, or urge wholesale rejection of hearsay testimony without acknowledging that such testimony is acceptable in administrative proceedings so long as the

residuum rule<sup>3</sup> is satisfied, as it clearly was herein (*Id.* at 4-13; 19-22). The Board further contends that respondent errs in claiming that certain of its allegations “appear” not to have been sustained, when the ALJ’s overall discussion and summation of respondent’s own testimony makes it clear that they were<sup>4</sup> (*Id.* at 13-17), and that – notwithstanding respondent’s attempts to cast blame for the “note” incident elsewhere and characterize the writing in question as angry but not threatening – Board witnesses clearly testified that they did, in fact, feel threatened and intimidated by respondent’s note, the language of which speaks for itself (*Id.* at 18-19).

Upon review, the Commissioner finds respondent’s exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by her in weighing the testimony and evidence, and in concluding that the record overall overwhelmingly supported the Board’s charges. Notwithstanding respondent’s contentions to the contrary, the Commissioner finds no basis in the record, which includes transcripts of all five days of hearing, to reject either the ALJ’s recitations of testimony or her determinations of witness credibility;<sup>5</sup> similarly, the Commissioner judges the ALJ’s findings of fact to be supported by a voluminous documentary and testimonial record as appropriately summarized in the Initial Decision.<sup>6</sup> Moreover, the Commissioner fully concurs with the ALJ’s assessment of respondent’s conduct in light of applicable law and prior decisional precedent, and

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<sup>3</sup> *N.J.A.C.* 1:1-5.5(b).

<sup>4</sup> In one instance, the Board attributes respondent’s stance to the ALJ’s reference (at 18-19) to “September 2003” as the due date of a doctor’s note, when it is clear from the context that she is referring to respondent’s absence between September 30, 2003 and October 6, 2003 without providing a doctor’s note as required upon his return on October 7, 2003. (Board’s Reply at 14-15)

<sup>5</sup> It is well established that the Commissioner must defer to the credibility findings of the ALJ unless these prove to be 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).

<sup>6</sup> In this regard, the Commissioner rejects both respondent’s contention that the ALJ was required to set out in detail the specific basis for each finding when such basis is evident from the Initial Decision’s discussion of testimony and evidence, and the Board’s suggestion that each and every allegation supporting its charges should be specifically addressed in the Initial Decision when consideration of the major allegations under each charge was more than sufficient to render a determination as to whether a charge was proven.

agrees that the conduct proven in this proceeding amply warrants respondent's dismissal from tenured employment.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL directing removal of respondent from his position of tenured employment is adopted as the final decision in this matter.

IT IS SO ORDERED.<sup>7</sup>

COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2010

Date of Mailing: April 23, 2010

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<sup>7</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.