

#12-10 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu13598-08_1.html)

IN THE MATTER OF THE TENURE :
HEARING OF CARL RUGGERO, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP: DECISION
OF IRVINGTON, ESSEX COUNTY. :
_____:

SYNOPSIS

The petitioning Board certified tenure charges against respondent for various acts of misconduct constituting insubordination and conduct unbecoming a school employee, including making intimidating verbal attacks against a fellow employee, inappropriate and disrespectful comments to the building principal, and lounging on a desk, watching a movie, during working hours. The Board sought dismissal of respondent from his tenured employment.

The ALJ found that: the Board has carried its burden to prove the charges against respondent; respondent's prior reprimands display a pattern of insubordination constituting conduct unbecoming a public employee; and respondent displayed immaturity and bad judgment as reflected by his unwillingness to admit any wrongdoing whatsoever. Accordingly, the ALJ recommended respondent's removal from his tenured employment.

Upon independent review of the record, the Commissioner concurred with the ALJ's findings and adopted the Initial Decision of the OAL as the final decision in this matter. Respondent was dismissed from his tenured employment, and the matter transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

<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>

January 14, 2010

OAL DKT. NO. EDU 13598-08
AGENCY DKT NO. 298-10/08

IN THE MATTER OF THE TENURE :
HEARING OF CARL RUGGERO, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP: DECISION
OF IRVINGTON, ESSEX COUNTY. :
_____:

The record of this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Respondent and the District requested and were granted extensions of time within which to file exceptions and reply exceptions, respectively, to the Initial Decision. These submissions were filed in accordance with the extended timelines.

Respondent's exceptions – in pertinent part – essentially present a verbatim replication of the arguments advanced in his post-hearing submission before the Administrative Law Judge (ALJ) below, again contending 1) the charges against him sound in inefficiency rather than unbecoming conduct and, therefore, must be dismissed as the Board did not comply with the procedural requirements of *N.J.S.A.* 18A:6-11 and *N.J.A.C.* 6A:3-5.1(c); 2) the Board bears the burden of proof which it has not met – respondent was suddenly criticized for doing things that were accepted in the past; 3) the majority of the charges are minor infractions or attributable to the provocation of others and should not result in respondent's loss of his position. As it is determined that all of these issues were fully considered and well addressed by the ALJ in his decision, they will not be revisited here.

Upon a considered review of the entire record in this matter – which included transcripts of the hearing conducted at the OAL on March 11, March 31 and April 23, 2009 – the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct and that termination from his tenured position is warranted.

In so determining, the Commissioner has given full consideration to all evidentiary proofs comprising the record and is cognizant of the importance of the ALJ's assessment of the credibility of the witnesses. 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))

The Commissioner finds the ALJ's fact-finding analysis and conclusions as to the truth of the Board's allegations and the characterization of respondent's behavior as unbecoming conduct to be fully supported by the record and, additionally, consistent with applicable law.

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that “[f]actors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the individual'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*, decided by the Commissioner October 14, 1997, slip. op. at 32, citing *In re Hearing of*

Ostergren, Franklin School District, 1966 S.L.D. 185; 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).

The Commissioner finds the charges in this matter serious in nature. Respondent's February 6, 2008 initiation of two confrontations – one in the equipment room and the other in the laundry room of the school – wherein he engaged in loud, intimidating, vulgar and unprovoked verbal attacks against a fellow staff member exhibiting escalating anger and a total lack of self-control in the presence of other co-workers and – in one instance – a student, is egregious, indefensible, and well beyond the professional boundaries of a teaching staff member. By his actions on this date, respondent clearly conducted himself in a highly unbecoming manner. Further, notwithstanding that the District's other charges dealing with respondent's conduct, demeanor and attitude were the subject of prior written disciplines against him, these serve as further substantiation of the impossibility of allowing respondent to remain in his position. Respondent has engaged in an on-going pattern of exhibiting a defiant and disrespectful attitude toward the authority of his building principal – at times in front of parents and other school employees – which operates to undermine her ability to successfully perform her job responsibilities, to her detriment and to that of the District. Such repeated insubordination is clearly conduct unbecoming a professional teaching staff member. Finally, watching a movie during working hours and failing to maintain his office in sanitary condition evidence an overall attitude and conduct toward his job responsibilities which is cavalier and irresponsible in nature to say the least and serve to evidence that respondent is laboring under an unacceptably skewed work ethic. I have accorded little weight to respondent's apparent justification for this behavior, *i.e.*, he was not previously chastised for this same type of conduct by other administrators in the past. As an experienced teaching staff member, respondent should

be fully aware that because a previous administrator may have turned a blind eye to his exhibitions of a lackadaisical attitude toward his work responsibilities in no way makes this acceptable or professional behavior.

Despite numerous written reprimands advising him of the necessity of conforming his aberrant behavior to that reasonably demanded of a teaching staff member in the public schools (See Exhibit P-9, P-10, P-11, P-12, P-13), respondent has been unwilling or unable to do so. Also particularly troubling is respondent's failure to take responsibility for any problematic behavior on his part – let alone be repentant for it. His response to the charges against him ranges from complete denial of the alleged behavior to allegations that such behavior was inconsequential in nature and/or provoked by others – a position which is categorically belied by the record. Finally, the Commissioner does not find that the record before her provides any promise that respondent will improve his interpersonal relationships with fellow staff members, yield to the authority of his building principal without continued conflict, or improve his overall work ethic.

The Commissioner finds and concludes that respondent's actions in this matter evidence a lack of the self-restraint and controlled behavior which are *compelled* by his position as a professional employee in a public school system, in which he holds great influence over the lives of children. See *In re Sammons*, 1972 S.L.D. 302, 321. Although considering respondent's acceptable prior record and extended employment with the District, the Commissioner nonetheless determines that the incidents proven to have occurred demonstrate that he is unfit to remain in his position. *Redcay v. State Board of Education*, 130 N.J.L. 369, 371 (Sup. Ct. 1943); *aff'd* 131 N.J.L. 326 (E. & A. 1944)

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from his tenured position with the Irvington School District. This matter will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: January 14, 2010

Date of Mailing: January 15, 2010

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)