

#431-10 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF GREG YOUNG, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
BOROUGH OF SOUTH PLAINFIELD, :
MIDDLESEX COUNTY. :
_____ :

SYNOPSIS

The petitioning Board certified tenure charges against respondent – a school guidance counselor – for conduct unbecoming a teaching staff member, insubordination and other just cause for dismissal. The charges stem from a series of incidents which began in the 2003-04 school year and continued through the 2008-09 school year, wherein respondent: used profane, sexually explicit or inappropriate language in interactions with co-workers; made unwelcome flirtatious overtures toward female co-workers; and repeatedly used obscene language to criticize administration and colleagues. Respondent denied the charges.

The ALJ found that: the Board has carried its burden to prove the charges against respondent by a preponderance of the credible evidence; respondent engaged in a pattern of improper interactions with co-workers over the course of several school years, and continued this unbecoming conduct even after repeated warnings that his behavior was not consistent with the professionalism expected of a teaching staff member; each charge against respondent, standing alone, would not warrant his dismissal from employment; in this case, however, respondent – after repeated efforts by the Board to counsel, transfer, and reprimand him – shows no understanding that his behavior is intolerable and incompatible with the mission of public schools. 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>

October 15, 2010

IN THE MATTER OF THE TENURE :
HEARING OF GREG YOUNG, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
BOROUGH OF SOUTH PLAINFIELD, :
MIDDLESEX COUNTY. :
_____ :

The record of this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions and the District's reply thereto – submitted in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in making her determination herein.

Respondent's exceptions essentially recast and reiterate his arguments made before the Administrative Law Judge (ALJ) below. As it is determined that these were fully considered and addressed in the Initial Decision, they will not be revisited here.

Upon comprehensive consideration of the record of this matter, which includes transcripts of the 7 days of hearing at the OAL,¹ the Commissioner concurs with the ALJ's findings and her conclusion that the Board has proven its charges against respondent by a preponderance of the credible evidence and that – based on the totality of the record here – termination of his employment is warranted. In so determining, the Commissioner has given full consideration to all evidentiary proofs which comprise the record and recognized that of

¹ Hearing was held on December 16, 2009, March 25, April 7, April 27, April 29, May 13 and June 8, 2010.

particular importance was the ALJ's assessment of the credibility of the witnesses. Such being the case – and the ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before her, 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's reasoned review of the entire record before her provides no basis whatsoever for any alteration of the ALJ's determinations.

With respect to the appropriate penalty, the Commissioner is mindful that “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*, 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 charges in the instant matter establish that during the course of his employment in the District, which began in September 2000, respondent has engaged in a pattern of behavior² wherein he used profane, sexually explicit or inappropriate language in interactions with co-workers, made unwelcome flirtatious overtures to female co-workers, and criticized

² The incidents which formed the basis of the charges against respondent began in the 2003-04 school year and continued through the 2008-09 school year, at which time tenure charges were certified against him.

administration and colleagues repeatedly using obscene language, depriving these individuals of the dignity to which they are entitled as District employees, creating an uncomfortable work environment, and impairing the ability of the individual targets of his improper behavior to effectively discharge their duties. Although the Commissioner is in agreement with the ALJ that each of the seven charges against respondent – standing alone – would not typically warrant his dismissal from his position of employment but, rather, would call for administrative counseling or minor discipline (Initial Decision at 21), she also recognizes that this pattern of conduct persisted over a prolonged period of time, and – despite repeated warnings, reprimands, admonitions and opportunities for improvement afforded him – respondent has remained unwilling or unable to conform his conduct to that which must reasonably be expected from a professional teaching staff member. Additionally, the Commissioner finds particularly disquieting respondent’s adamant refusal to accept personal responsibility for his actions and to exhibit any modicum of sincere regret. Rather, he casts aspersions upon the truthfulness of the victims of his actions and attempts to shift the blame for his wrongdoings onto them. Respondent apparently views himself as a victim rather than a perpetrator, claiming that he is being singled out and harassed, and that his character is being defamed. Consequently, based on this record, it cannot be said that respondent’s behavior is an aberration; nor can it be said that it is less likely than not that such conduct would be repeated in the future. This does not portend a positive learning environment for students or a harmonious working relationship with District staff. Under these circumstances, the Commissioner cannot entertain the prospect of respondent’s return to the District and the resultant potential for the perpetration of an unhealthy educational environment.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. Respondent is hereby dismissed from his tenured position with the School District of the Borough of South Plainfield. 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.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2010

Date of Mailing: October 15, 2010

³ 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*)