

#246-11 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE HEARING :
HEARING OF ANTHONY COLUCCIO, JR., : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : DECISION
OF CORRECTIONS, EDNA MAHON :
CORRECTIONAL FACILITY FOR WOMEN. :

SYNOPSIS

The New Jersey State Department of Corrections filed tenure charges of conduct unbecoming a public employee against respondent, a tenured teacher of cosmetology, and sought to terminate his employment at the Edna Mahon Correctional Facility for Women. The charges arose out of an improper and unauthorized relationship with an inmate in the correctional facility.

The ALJ found, *inter alia*, that: the testimony of the inmate with whom respondent allegedly had an improper relationship was articulate, credible, and supported by letters she had authored to respondent and recordings of contemporaneous telephone conversations between the inmate and her mother; respondent's testimony was articulate and coherent, but his version of events was at odds with the documentary and physical evidence presented by the Department, as well as the recorded telephone conversations with the inmate's mother; based on the credible evidence, respondent instigated and maintained a consensual, but improper, relationship with the adult inmate from October 2008 until April 2009; respondent's prior disciplinary history – and the fact that the improper relationship was with an adult student, was reciprocated, and did not directly compromise the facility's security – mitigates against the penalty of termination. Accordingly, the ALJ concluded that the Department of Corrections has established that respondent is guilty of conduct unbecoming, but determined that the appropriate penalty in this matter is a one-year suspension without pay.

The Commissioner concurred with the ALJ that the respondent is guilty of unbecoming conduct, but found that respondent's improper and unauthorized relationship with an inmate necessitates his termination from tenured employment. Accordingly, the Commissioner adopted the Initial Decision of the OAL as to the ALJ's finding that respondent is guilty of conduct unbecoming, and dismissed respondent from his tenured position.

<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>

July 5, 2011

OAL DKT. NO. EDU 60-10
AGENCY DKT NO. 158-7/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon a comprehensive review of the entire record in this matter – which included transcripts of the hearings conducted at the OAL on June 4, June 11, August 16, and October 27, 2010 – the Commissioner concurs with the Administrative Law Judge (ALJ) that the Department of Corrections (Department) has established that the respondent is guilty of unbecoming conduct. The Commissioner finds no basis in the record to reject either the ALJ’s recitations of testimony or her determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony.¹ Specifically, with respect to the credibility of the respondent and the inmate with whom he had the relationship, the ALJ found the following,

A review of the entire record therefore shows Lindorff’s version of the events to be the more credible one. She was direct, candid and articulate in her testimony. Further, that testimony was supported by the letters she wrote to Collucio as the relationship progressed, and importantly, by the taped telephone conversations with her

¹ 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)*.

mother. Those conversations were recorded contemporaneously with many of the events. Collucio's version of events, while delivered in an articulate manner, fails in comparison to the weight of the evidence presented by the Department.

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

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that the "[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 recognizes that the charges in this matter are serious in nature and finds that the respondent's improper and unauthorized relationship with an inmate necessitates the termination of his tenured position. The respondent's unbecoming conduct was not the result of an isolated incident, but rather a pattern of conduct that occurred between October 2008 and May 2009, which involved multiple discussions with sexual overtones and inappropriate touching of the inmate initiated by the respondent. Although the relationship was technically consensual in nature, as a teacher in a correctional facility the respondent inherently had a degree of power over the inmate which further exacerbates the gravity of his conduct.

The record also demonstrates that respondent's responses to the charges against him range from complete denial of the alleged behavior to allegations that such behavior was inconsequential in nature and directed at a co-worker, a position that is completely inconsistent with the testimonial evidence. Additionally, the respondent conceded that he authored the sexually explicit contents of the "post-it note" as well as the "Application for a Relationship" questionnaire, although he incredibly maintained at the hearing that neither document was intended for the inmate, but instead for a co-worker with whom he had a friendly relationship. The mere fact that the respondent wrote the contents of those documents while working as a teacher at the correctional facility – and carelessly left them around his desk – demonstrates his severe lack of judgment and an astounding inability to appreciate the egregiousness of his behavior. Finally, the Commissioner considered respondent's extended employment with the Department, and nonetheless determines that the nature of the incidents proven to have occurred demonstrate that he is unfit to remain in his position.

Accordingly, the Initial Decision of the OAL is adopted as to the ALJ's finding that the respondent is guilty of unbecoming conduct. Respondent is hereby dismissed from his tenured position with the Department.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 5, 2011

Date of Mailing: July 5, 2011

² 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*)