

#37-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF JOANNE BRUNO, : COMMISSIONER OF EDUCATION
SOUTH HUNTERDON REGIONAL : DECISION
SCHOOL DISTRICT, :
HUNTERDON COUNTY. :

SYNOPSIS

The petitioning Board certified charges of conduct unbecoming against respondent – a tenured business teacher employed by the district for more than 30 years – for making various misrepresentations concerning medical and psychiatric examinations requested by the Board. Additionally, the Board alleged that respondent exhibited a pattern of tardiness, insufficient class preparation and engagement, lack of communication, and incomplete paperwork related to field trips which constituted insubordination. Respondent denied the charges. The Board sought respondent’s removal from her tenured position.

The ALJ found, *inter alia*, that: although respondent may have had a legitimate medical condition, her excuses, changes of rationale and refusal to provide documentation substantiating her condition create a strong inference that she did not wish to cooperate with the Board; respondent postponed her post-observation conference indefinitely by asserting a medical condition that she then could not or would not substantiate; additionally, petitioning Board has met its burden of proving that respondent failed to notify school authorities when she changed hotel arrangements for the Future Business Leaders of America club’s field trip to the State convention; failed to properly supervise her students on two separate occasions; and failed to follow the school district’s lesson plan policy. The petitioner failed to prove that respondent was chronically late. The ALJ concluded that respondent engaged in multiple acts constituting conduct unbecoming a teacher, but that such conduct did not rise to the level necessary for termination of her employment. The ALJ further concluded that – balancing the respondent’s overall successful teaching history with the nature and relatively brief period of her problematic conduct – a one-year suspension and withholding of respondent’s annual increment in the following year is the appropriate penalty in this case.

Upon careful review and consideration, the Deputy Commissioner (to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-33*) concurred with the ALJ’s findings and determination, and additionally ordered that respondent – as a condition of her re-employment and return to teaching duties – must produce a then-current medical assessment from a District-selected physician in order to reassure the Board, and respondent, that she is able to resume her responsibilities as a teacher. Accordingly, the respondent: was suspended for a period of one year without pay; will forfeit her salary increments for the year in which she returns to service; and was ordered to produce a medical report certifying her readiness to return to work prior to her reemployment.

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.

January 30, 2012

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SCHOOL DISTRICT, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent – with the consent of her adversary – was granted an extension of time to file exceptions, pursuant to *N.J.A.C.* 1:1-18.4. The Board of Education’s (Board) exceptions and reply, received January 17, 2012, and respondent’s response were fully considered by the Deputy Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A.* 18A:4-33 – in reaching his determination herein.

In petitioner’s exceptions and reply, the Board fully endorses the Administrative Law Judge’s decision, which finds that the respondent exhibited unbecoming conduct when she neglected to satisfy the post-observation meeting requirements, raised a questionable medical issue, ignored the need to advise the administration on a change of venue for the FBLA trip, failed to supervise students and disregarded the District’s policies. The Board’s only exception to the ALJ’s decision related to the penalty. Given the finding that it had met its burden by a preponderance of the credible evidence, the Board argues that the penalty of termination is required rather than suspension for one year and loss of the increment upon re-employment.

In respondent’s exceptions, Ms. Bruno contends that the Administrative Law Judge (ALJ) erroneously sustained the Board’s charge of unbecoming conduct and further

asserted that the Board's evidence is insufficient and not adequately credible to warrant even a one-year suspension and the loss of her increment upon her return to employment.

In support of her arguments, respondent also asserts that it was not unbecoming conduct when she failed to attend her post-observation conference without being accompanied by a medical professional, whom she said was necessary. Instead, she believes that once she rescinded the demand, the meeting could have proceeded.

She further maintains that it was not unbecoming conduct when she failed to comply with the Board's resolution to submit to medical exams pursuant to *N.J.A.C.6:32-6.3(e)* because she claims she had a legal right to request a full evidentiary hearing before the Board on the issue of why the exams were necessary. After asserting her right before the Board in closed session, she and her attorney walked out of the session when her request was denied.

Additionally, respondent avers that it was not unbecoming conduct when she neglected to prepare an emergency lesson plan and leave it, along with the class roster, in her desk or in the main office in the event of an unexpected sick day. Moreover, respondent opines that the ALJ mistakenly characterized what actually happened and relied on questionable evidence. In support of her position, she posits that the only record of this incident was all made up and written by the principal or – if not written by him – by someone else whom the Board did not produce at the hearing to affirm its authenticity; therefore, the document was not credible.

Ms. Bruno also maintains that the ALJ erred when he found that she engaged in unbecoming conduct by unilaterally changing the venue of an overnight FBLA field trip without first seeking permission and, once effected, failing to apprise the administration of the change. Again, the respondent believes that it was not wrong to leave some students unsupervised while others attended a different event in the hotel, and asserts that she was going to tell the administration at some point. That the principal learned of the new arrangements two days

before the trip – before Ms. Bruno had an opportunity to inform the administration – was happenstance.

Finally, the respondent argues that it was not unbecoming conduct when she failed to supervise the middle school children who ran the school store, or the students during lunch period, or the members of her FBLA club. Ms. Bruno explained that these lapses – if they occurred – were infrequent, of short duration and common practice, especially during lunch.

Upon full review and consideration and a thorough reading of the hearing transcripts,¹ the Commissioner makes the following observations. Ms. Bruno was the first to mention her medical condition and the need to have medical personnel accompany her to her post-evaluation conference. The principal, after having just observed her lesson and witnessed some planning and execution issues that a 30-year teaching professional should not have confronted, believed that her medical and mental condition could have an impact on her teaching and her students. In ordering medical and psychiatric exams, the principal sought to protect both the respondent and her charges. The record also revealed Ms. Bruno's unwillingness to follow certain directives –whether a Board resolution, an ALJ order or district policies – led to a protracted, time-consuming sequence of events: It took 16 months to schedule the medical exams the principal requested. Moreover, the ALJ comments that respondent's cardiology report had still not been submitted to the ALJ or attached to her post-hearing brief. (Initial Decision at 14, Footnote 10)

As to the other elements of the charge of conduct unbecoming, the Commissioner determines that the Board has proven by a preponderance of the credible evidence that Ms. Bruno's conduct manifested a fundamental disregard for authority; respondent exhibited no

¹ The hearings in this matter were conducted on January 31, 2011 and March 9, 2011.

regret or qualms about engaging in behavior that undermined the public's trust and confidence in her services.

Based on the foregoing, the Commissioner finds and concludes that – in the absence of any basis in the record on which to dispute the fact-finding and credibility determinations of the ALJ pursuant to *N.J.S.A. 52:14B-10(c)*, *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987) – he concurs with the ALJ that the Board has established that respondent engaged in multiple acts of unbecoming conduct. The ALJ had the opportunity to assess the credibility of the witnesses who appeared before him and made findings of fact based upon their testimony; having found the Board's witnesses credible, he was nevertheless silent as to Ms. Bruno's credibility. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

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)*].

Moreover, the Commissioner concurs with the ALJ's assessment of respondent's conduct, which – while egregious and disconcerting – does not warrant her termination in light of applicable law and prior decisional precedent. Additionally, he agrees that the conduct proven in this proceeding amply warrants respondent's suspension without pay for one year and the forfeiture of her salary increment. The Commissioner is also mindful that as a result of her suspension, the respondent will not have performed her teaching duties for an extended period of time. Consequently, the Commissioner also orders Ms. Bruno – as a condition of her re-employment and return to her duties – to produce a medical report from a new cardiology exam, performed by District-selected physicians and at the Board's expense. This new medical

assessment will reassure the Board and Ms. Bruno that she is able to resume her responsibilities of serving her students, the Board and the community.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL – as modified above – is adopted as the final decision in this matter. Respondent is hereby suspended for a period of one year without pay from her tenured position with the South Hunterdon Regional Board of Education, and is ordered to produce the medical report, as outlined above, before her employment and salary shall re-commence; upon her return to service, respondent shall forfeit her employment and adjustment increments for the year.

IT IS SO ORDERED.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: January 30, 2012

Date of Mailing: January 31, 2012

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*)