

IN THE MATTER OF THE TENURE HEARING :
OF BRIGITTE GEIGER, SCHOOL DISTRICT :
OF THE TOWNSHIP OF MOUNT OLIVE, :
MORRIS COUNTY. : COMMISSIONER OF EDUCATION
AND : DECISION
IN THE MATTER OF THE TENURE HEARING :
OF SHARON JONES, SCHOOL DISTRICT :
OF THE TOWNSHIP OF MOUNT OLIVE, :
MORRIS COUNTY. :

SYNOPSIS

This case, on remand from the Appellate Division, stems from certified tenure charges of unbecoming conduct filed by the Board against respondents – tenured physical education teachers employed at Mount Olive High School – for allegedly engaging in a verbal exchange that was racially derogatory and overheard by students. Respondents denied making the alleged comments, and contended that the students had fabricated their story based on biases against the respondents. The Board argued that the respondents’ March 2012 conversation in the girl’s locker room, during school hours, amounted to conduct unbecoming of teachers, and sought removal of respondents from their tenured positions. Subsequent to a hearing in the Office of Administrative Law (OAL), the ALJ determined that the respondents’ actions in making derogatory comments – together with their denial of and failure to take responsibility for their actions – constituted conduct unbecoming, and warranted dismissal from their tenured positions. The matter was delegated by the Commissioner – pursuant to *N.J.S.A. 18A:4-34* – to an Assistant Commissioner, who concurred with the ALJ’s findings and conclusions. The Initial Decision of the OAL was adopted as the final decision in October 2013. Respondents appealed to the Appellate Division of the Superior Court.

On appeal, the Appellate Division upheld the determination that the respondents were guilty of conduct unbecoming, but remanded the matter to the Commissioner for further consideration of the severity of the penalty imposed based upon then-existing precedent in similar cases. In so deciding, the Appellate Division recommended, going forward, that the Commissioner give notice of an intent to impose greater discipline for racially insensitive comments made in the school setting.

Pursuant to the direction of the Appellate Division, and based on the precedent that existed at the time of the respondents’ racially derogatory comments, the Commissioner determined that the appropriate penalty for respondents’ unbecoming conduct shall be forfeiture of the 120 days of salary already withheld pursuant to *N.J.S.A. 18A:6-14*, suspension for an additional six months without pay, and the withholding of salary increments for two years. In accordance with the Appellate Division’s instructions, the Commissioner noted that this decision shall serve as notice to the regulated community that similar conduct in the future will result in more severe sanctions.

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.
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June 6, 2016

OAL DKT. NOS. EDU 5974-12 and EDU 6047-12 (consolidated)
AGENCY DKT NOS. 106-4/12 and 107-4/12

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This consolidated case involves tenure charges of unbecoming conduct brought by the Board against respondents – Brigitte Geiger and Sharon Jones, two teachers in the Mount Olive School District – based on the use of racially derogatory comments in reference to African American students. Specifically, it is alleged that two students – G.H. and Z.C. – overheard a conversation in the locker room in which respondent Jones said something to the effect of “these Negroes think they are tough shit” to which respondent Geiger replied “yeah, that is what they are a bunch of Negroes, Negroes, Negroes.” The Administrative Law Judge (“ALJ”) found that the respondents were guilty of unbecoming conduct, and recommended that they be dismissed from their tenured positions with the Mount Olive School District.

In a decision dated October 7, 2013, an Assistant Commissioner concurred with the ALJ that the Board established that the respondents were guilty of unbecoming conduct. The Assistant Commissioner was also in accord with the ALJ’s determination, based on the circumstances and considerations existing in the matter, that the removal of respondents from their tenured positions was appropriate. The respondents appealed the Assistant Commissioner’s October 7, 2013 decision, and on November 18, 2015, the Appellate Division affirmed the Assistant Commissioner’s determination that

respondents were guilty of unbecoming conduct, but remanded the matter for determination of a lesser sanction than removal.

In a supplemental submission following the Appellate Division's November 18, 2015 decision, the Board argues that the penalty imposed on respondents should be an unpaid suspension for time served from October 7, 2013 – the date of the Assistant Commissioner's decision, when respondents were terminated – to January 2, 2016, when respondents were reinstated, plus any other penalties that the Commissioner finds appropriate, such as increment withholdings or sensitivity training. The Board emphasizes that the respondents' behavior cannot be tolerated, especially in light of the Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13, et seq.*, which prohibits discrimination on the basis of characteristics, such as race.

Further, the Board contends that the Appellate Division's reliance on: *In the Matter of the Tenure Hearing of Lauren Cooke, School District of the Township of Egg Harbor*, Commissioner Decision No. 503-10, decided November 22, 2010; *In the Matter of the Tenure Hearing of Barbara Emri, School District of the Township of Evesham, Burlington County*, Commissioner Decision No. 371-02, decided October 12, 2002; *In the Matter of the Tenure Hearing of Jayson H. Burg, State-Operated School District of the City of Newark, Essex County*, Commissioner Decision No. 649-97, decided December 18, 1997; and *In the Matter of the Tenure Hearing of Adelphia Poston, School District of the City of Orange Township, Essex County*, Commission Decision No. 362-06, decided October 19, 2006, was misplaced, because respondents' conduct was more severe than that of the teachers in those cases. Instead, the Board argues that this matter is more similar to the discriminatory comments in *In the Matter of the Tenure Hearing of Madhumita Chaki, Franklin Township School District, Somerset County*, Commissioner Decision No. 542-11, decided December 12, 2011, which resulted in the teacher's removal. Finally, the Board points out that back pay of any sort would not be a penalty and would instead punish the District for appropriately pursuing tenure charges.

In response, the respondents reiterate that they should be disciplined consistent with the precedent that existed at the time of their conduct, and that similar circumstances previously resulted in a

suspension rather than a removal. Respondents contend that in determining an appropriate penalty, the Commissioner should consider that the statements at issue were not directed at students – nor were they intended to be heard by students – and that respondents had unblemished records of thirty-one and twenty-eight years, respectively. In consideration of those factors and existing precedent, respondents argue that – at most – a two-month suspension is justified. Respondents further argue that the regularity and pervasiveness of the conduct in *Chaki* distinguishes that case from the instant matter. Finally, respondents insist that they are entitled to back pay and increments – except for the period of any suspension that the Commissioner imposes – in order to be made whole.

Pursuant to the direction of the Appellate Division, the Commissioner has considered the precedent that existed at the time of respondents’ racially derogatory comments, as well as the mitigating and aggravating factors. Accordingly, respondents: shall forfeit the 120 days’ salary that has already been withheld pursuant to *N.J.S.A.* 18A:6-14; shall be suspended for an additional six months without pay; and shall have their increments withheld for two years. In accordance with the Appellate Division’s instructions, this will serve as notice to the regulated community that similar conduct in the future may result in more severe sanctions.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 6, 2016

Date of Mailing: June 7, 2016

* 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)