

IN THE MATTER OF THE TENURE :  
HEARING OF JOSEPH PRINZO, : COMMISSIONER OF EDUCATION  
PASSAIC COUNTY TECHNICAL : DECISION  
INSTITUTE, PASSAIC COUNTY. :

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SYNOPSIS

The Board certified tenure charges of unbecoming conduct against respondent, T.V. Production Instructor, for allegedly allowing his summer program students to watch an inappropriate and unacceptable videotape. The Board charged him with failing to follow proper procedure governing the use of a videotape in his classroom, not properly supervising the students in his charge and allowing students to view a sexually explicit videotape.

The ALJ concluded that respondent engaged in conduct unbecoming a teacher warranting disciplinary action. Even though the ALJ did not find sufficient credible evidence to support a conclusion that respondent either gave the students express permission to watch the offensive videotape or, with knowledge of the activity, permitted it to continue, the ALJ determined that the Board had proven, by a preponderance of credible evidence, that respondent did leave three students essentially unattended for approximately 20 to 30 minutes and failed to properly supervise the students which, in turn, led to their viewing of an inappropriate movie during classroom time. However, in light of mitigating factors in this case including the findings that the students switched the videotape without respondent's knowledge; that respondent was engaged in conducting a tour of the rooms comprising the t.v. production studio for a prospective student, her parent and the guidance counselor during a portion of the unsupervised time; and that participants on the tour failed to make their observations that the videotape contained adult nudity and sex known to respondent so that the viewing could be ceased sooner, the ALJ determined that the penalty of dismissal was not warranted. Thus, the ALJ concluded that a loss of salary for a period of 30 days was reasonable discipline regarding this charge. (*In re Sammons; In re Fulcomer*)

Having reviewed the record, including the hearing transcripts and the parties' arguments, the Commissioner concurred with the ALJ that the Board sustained its burden of proving that respondent was guilty of conduct unbecoming a teacher for failure to properly supervise his students. Moreover, the Commissioner agreed with the ALJ that, in view of the circumstances of this matter, the extreme penalty of dismissal was not warranted. The Commissioner concurred with the penalty of 30 days loss of pay.

August 20, 2001

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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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent’s exceptions and the Board’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination herein.

In his exceptions, respondent takes issue with Finding of Fact 55 in the Initial Decision wherein the Administrative Law Judge (ALJ) credits student T.J.’s statement that he viewed the videotape “Belly” for approximately two minutes before he left the room with Coach John Iurato. (Respondent’s Exceptions at 1) Pointing out that the ALJ stated that she placed limited weight on T.J.’s testimony because of his inability to accurately remember certain particulars about the August 2, 2000 incident, including the number of students in the class, Mr. O’Neill’s arrival time and his alleged observation of respondent in the locker room, and given the ALJ’s observation on page 31 of the Initial Decision that ““it is reasonable to conclude that TJ’s recollection as to the sequence of events and occurrence of certain events is not accurate,”” respondent argues that T.J.’s testimony that he viewed the “Belly” video for two minutes should not be credited in Finding of Fact 55 to establish that the video was first watched between 9:30 a.m. and 9:40 a.m. before the tour for the prospective student commenced. (*Id.* at 2-3)

Respondent alleges that the only competent direct evidence dictates that the “Belly” film could not have been viewed before the tour began because the portion of the video that Guidance Counselor Elizabeth Schultz identified as seeing at the end of the tour occurs at 12 minutes, 25 seconds into the video and the testimony establishes that the tour lasted between 13-16 minutes. Thus, respondent argues that it is improper to draw the inference that respondent improperly supervised his students prior to the start of the tour. (*Id.* at 4) In further support of his contention that the ALJ erred in Finding of Fact 55, respondent points to the ALJ’s comments on page 32 of the Initial Decision wherein she states that it is reasonable to conclude that the viewing of the film occurred either shortly before or shortly after the tour began. (*Ibid.*)

Respondent also objects to the ALJ’s conclusion that he failed to properly supervise his students following the tour. Respondent maintains that the students in his class were well disciplined and that he wasn’t concerned about what the students were doing after he completed the tour because he assumed they could work independently following their regular routine of editing portions of the football film. (*Id.* at 5) Respondent also notes that at no time during the tour did the prospective student, the parent or Ms. Schulte mention that they observed anything inappropriate on the screen. (*Ibid.*) Respondent also underscores the fact that the teacher relieving him, Mathematics Teacher Mark O’Neill, actually watched the movie with the students, and that the District does not have a policy restricting tours by potential students and their parents to times when the instructional process is not underway. (*Ibid.*)

Respondent submits that the size and the layout of the production studio prohibits any one person from being able to observe the whole area at any one time and that the Board bears some responsibility in what occurred because respondent was operating under an administrative directive to conduct the tour during an instructional session and Ms. Schulte failed to immediately inform respondent about what she saw on the screen so that he could put a stop to it. (*Id.* at 6-7) Respondent also takes issue with the manner in which the Board conducted the

investigation of the incident, averring that Superintendent Lobosco acknowledged that she was unaware of what Mr. O'Neill knew about the incident until he was called as a witness because Mr. O'Neill had never been interviewed. (*Id.* at 7)

Finally, respondent argues that it is unfair that he is subjected to the loss of a month's pay when other staff members whose actions or inactions directly contributed to what occurred are permitted to "simply walk away." (*Id.* at 8) Respondent, therefore, asks that the charges against him be dismissed in their entirety, or in the alternative, that a non-pecuniary penalty be imposed, such as placing a letter in respondent's file warning him that if future acts of a similar nature occur, respondent will be subject to dismissal and/or reduction in salary. (*Id.* at 9-10)

In its reply, the Board urges the Commissioner to accept the ALJ's findings of fact as they relate to the sequence of events, arguing that regardless of when the students started watching the "Belly" video, the students were in respondent's class and under his care at the time. (Board's Reply Exceptions at 1-2) The Board also takes issue with respondent's claim that he is a scapegoat and that a flawed administrative policy permitting tours during instructional time and other staff members' actions or inactions are to blame for this incident, arguing that this is respondent's attempt to try to shift blame for what was clearly respondent's responsibility. (*Id.* at 4) The Board, therefore, requests that the Commissioner affirm the Initial Decision in its entirety and assess the penalty of 30 days loss of pay. (*Id.* at 5)

Having conducted a careful and independent review of the record in this matter, including the hearing transcripts and the arguments advanced by the parties, the Commissioner finds no cause to disturb the credibility determinations and factual findings rendered by the ALJ. The Commissioner is satisfied, based upon the record before him, that the ALJ appropriately measured the plausibility of content in deciding the credibility of witnesses and the proper weight to assign to testimony in reaching her factual findings and conclusions.

Accordingly, the Commissioner concurs that the Board has sustained its burden of proving that respondent is guilty of conduct unbecoming a teacher for failure to properly supervise his students during a 20-30 minute period of time by a preponderance of credible evidence.

As to the appropriate penalty, the Commissioner finds it necessary to balance the totality of the record herein with the need to stress most emphatically on respondent the seriousness of his conduct and his need to properly supervise the students under his care. The Commissioner agrees with the ALJ that, in view of all the circumstances in this matter, the extreme penalty of loss of tenured employment is not warranted. However, the Commissioner also agrees that respondent's lack of supervision of his students is a serious infraction deserving an appropriately severe penalty. The Commissioner, therefore, concurs with the penalty crafted by the ALJ.

Accordingly, the Initial Decision in this matter is adopted for the reasons expressed therein.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: August 20, 2001

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\* This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.