

IN THE MATTER OF THE TENURE :  
HEARING OF DEBORAH NOONE, :  
SCHOOL DISTRICT OF THE : COMMISSIONER OF EDUCATION  
TOWNSHIP OF NORTH BERGEN, : DECISION  
HUDSON COUNTY. :

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SYNOPSIS

The Board certified tenure charges of unbecoming conduct, neglect of duty and other just cause against respondent special education teacher and sought her removal from employment in the District. Respondent was suspended without pay pending disposition of the charges that she allowed special needs students from her self-contained special education class in the high school to engage in sexual activity during tenth period in her classroom, while she was present. Respondent denied the allegations and alleged she was unaware of the incidents.

The ALJ found that the Board failed to prove that respondent did not properly supervise her pupils on March 2, 2001 and failed to establish that respondent did not instruct her pupils during an instructional period. The ALJ concluded that the Board failed to show that respondent engaged in conduct unbecoming a teacher by amending her lesson plan for tenth period and failed to show neglect of duty. The ALJ dismissed the charges and ordered respondent reinstated with all salary and benefits.

The Commissioner modified the Initial Decision. *Citing In re Prinzo, In re Sammons, In re Tenney*, among others, the Commissioner found that respondent did fail to adequately monitor and supervise her pupils on March 2 during the tenth period. Thus, the charges of unbecoming conduct and other just cause were sustained. The Commissioner, however, although recognizing the serious implications attendant to respondent's failure to exercise her requisite responsibilities, also considered respondent's employment record and the mitigating factors and ordered forfeiture of the 120 days' salary already withheld and loss of increment for the 2002-2003 school year.

<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>
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board’s exceptions and respondents reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

In its exceptions, the Board urges the Commissioner to modify the Initial Decision, contending that two of the Administrative Law Judge’s (ALJ) findings of fact are inconsistent with the record herein. Specifically, the Board asserts there is no adequate proof on this record that the students blocked respondent from viewing their actions. (Board’s Exceptions at 2) Additionally, the Board asks the Commissioner to reject the ALJ’s finding that the entire episode lasted only about one minute, in favor of the testimony of J.S. who averred that it lasted about 15 minutes. (*Id.* at 3) The Board finds J.S.’s time estimation to be more logical, given the several acts that the student witnesses described.

The Board further argues that the ALJ’s conclusion as to respondent’s culpability should not stand, since the law is clear that the absence to act, or nonfeasance, may be the basis for culpability or liability. The Board asserts,

“Neglect of duty” means what it says, neglecting or failing to fulfill one’s duty. In this case, the classroom teacher was

responsible for acting reasonably in supervising her students and providing for their safety and security. Respondent breached that duty by failing to adequately monitor the activities of the pupils in her classroom.” (*Id.* at 3, 4)

In this connection, the Board cites to court decisions finding that boards and educators owe students a duty of care, as well as to administrative decisions affirming that a teacher can be held responsible for failure to properly supervise students. Moreover, as the Board underscores, respondent fails to provide any reasonable explanation for what occurred. The Board contends that her designation of “free time” was a “recipe for disaster,” as confirmed by her students. (*Id.* at 5) As an experienced special education teacher, the Board reasons, Ms. Noone “knew or should have known that emotionally disturbed pupils often act out and that unstructured and, apparently, unsupervised time could cause serious problems.” (*Id.*)

Thus, the Board insists that the within charges be sustained. As for the weight of the case law, the Board asks the Commissioner to recognize that “none of the cases have [sic] provided total vindication in the wake of such overwhelming proof of culpability.” (*Id.* at 9) However, if the Commissioner does not find that dismissal is warranted, the Board urges a reduction in salary that would be “significant enough to signal to the public that New Jersey is serious about the safety and security of its pupils and the integrity and quality of its system of public education.” (*Id.*)

In reply, respondent discounts the Board’s reliance on civil law litigation in the courts, noting, instead, that the question is whether she “properly or improperly supervised her class on March 2, 2001, during the 10th period.” (Respondent’s Reply at 2) Respondent further charges the Board with editorializing in its exceptions, making assertions that both lack relevancy or correctness. (*Id.*)

Furthermore, contrary to the Board's assertion, respondent contends there is adequate proof on this record that pupils blocked her from viewing what happened in tenth period class and, indeed, four pupils, who were positioned near her that day, testified that they did not see what was going on. (*Id.* at 3) Respondent also notes, "one of the student participants on March 2, 2001, testified that all that transpired, and he was there, lasted under a minute." (*Id.*) Finally, respondent asks the Commissioner to note the testimony of the administrative personnel who entered her class that day and recalled what they observed. (*Ibid.*)

#### COMMISSIONER'S DETERMINATION

Upon careful and independent review of the complete record in this matter, which included transcripts from September 10, 2001, September 11, 2001, September 24, 2001, October 18, 2001, October 22, 2001 and October 29, 2001,<sup>1</sup> together with post-hearing briefs, exhibits, exception and reply arguments, the Commissioner determines to modify the Initial Decision as set forth below.

Initially, the Commissioner determines that, with one exception, he must accept the ALJ's factual findings since each is each supported by sufficient, credible evidence in the record. However, the Commissioner does not concur that there is a preponderance of credible evidence herein to find that the entire episode at issue lasted less than one minute. (Initial Decision at 9) In this regard, the Commissioner recognizes that the principal actors in this incident were N.A., C.P., J.S. and M.O. However, M.O. did not testify and N.A. testified only with respect to Ms. Noone's class in general, not addressing the acts underlying these tenure charges. (Initial Decision at 7, 8) Additionally, although C.P. testified, the record herein does not include a transcript of his testimony; the Commissioner must, therefore, rely on the ALJ's

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<sup>1</sup> Hereafter, transcripts shall be designated as T1 through T6.

summary of that testimony and C.P.'s estimate that "the entire incident lasted no more than one minute." (Initial Decision at 7, footnote 1, and 8)

J.S., on the other hand, offered quite specific and graphic testimony about the incident, notwithstanding that his assessment as to the duration of time is vague. Indeed, although the excerpt at pages 6 and 7 of the Initial Decision accurately reflects the testimony of J.S. at T1, pages 50-52, this witness's account at pages 63, 64, 81 and 117 is undoubtedly inconsistent with the ALJ's "one minute" finding. Rather, J.S. recalls the multiple acts described took no more than 10 or 15 minutes (T1:81) wherein he testifies that N.A. "took her time," as did he. (T1:117) Based on his comprehensive review, the Commissioner cannot reasonably accept that these multiple acts, which undisputedly occurred in respondent's classroom, transpired in a one minute or less time period. (Initial Decision at 9)

As to the conclusions reached by the ALJ, even assuming Charges Two and Three were properly brought before him as charges of unbecoming conduct rather than inefficiency,<sup>2</sup> the Commissioner concurs with the ALJ for the reasons set forth in the Initial Decision that Counts Two and Three cannot be sustained.

However, the Commissioner sets aside the ALJ's recommendations with respect to Counts One and Four, finding, instead, that the Board has, indeed, met its burden of demonstrating respondent neglected her duties as a teacher by failing "to properly supervise her pupils, resulting in their engaging in dangerous and harmful activities," (Initial Decision at 5) In this regard, even assuming respondent was properly following district policy and procedure with respect to her lesson plan, and further assuming that she was providing some instruction to selected pupils during the tenth period class on March 2, 2001, the Commissioner nevertheless

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<sup>2</sup> Charges of inefficiency must follow procedures and timelines set forth at *N.J.A.C.* 6A:3-5.1(c).

finds respondent's dereliction of her duty to adequately supervise her students to be indefensible, under these circumstances.

The Commissioner has recently affirmed that, indeed, a teacher has a duty to supervise the students in his or her charge and to monitor those students' activities, in spite of other distractions. *In the Matter of the Tenure Hearing of Joseph Prinzo, Passaic County Technical Institute, Passaic County*, Commissioner Decision August 20, 2001. In *Prinzo*, the Board filed tenure charges against an T.V. Production Instructor, asserting, *inter alia*, that he failed to properly supervise his students, thereby providing them the opportunity to view a sexually explicit videotape without his knowledge or consent. The ALJ therein found, and the Commissioner affirmed, that Prinzo left his students substantially unsupervised for a period of 20-30 minutes. *Prinzo*, slip op. at 34. That he was otherwise engaged in conducting a studio tour for a prospective student, her parent and the guidance counselor during the unsupervised period *did not* serve to discharge Prinzo from his primary responsibilities as a teacher to monitor their activities. (*Id.*) As the ALJ noted, “[u]nquestionably, a teacher holds a sacred position demanding public trust and, as such, they are held to a high standard against which their conduct is to be measured.” (*Id.* at 35, citing to *In the Matter of the Tenure Hearing of Jacque L. Sammons*, 1972 *S.L.D.* 302, 321)

Similarly, where a tenured school librarian was found to have left a five-year-old child in an unattended area of the library substantially unsupervised for approximately five minutes, the ALJ found and the Commissioner affirmed that the “action by a teacher resulting in a student being unsupervised, even if for disciplinary reasons, constitutes unbecoming conduct.” *In the Matter of the Tenure Hearing of Victoria Jakubiak, State-operated School District of the City of Newark, Essex County*, Commissioner Decision February 11, 1999, slip op. at 42. In her

analysis, the ALJ cites to *In the Matter of the Tenure Hearing of Alan S. Tenney*, 1983 S.L.D. 836. There, respondent's actions were found to constitute unbecoming conduct where, on one occasion, he ordered a student to sit outside his classroom, unsupervised, for disciplinary purposes and on another occasion, he was found to have left his class unattended for 23 minutes. *Tenney, supra*, at 839.<sup>3</sup>

In the instant matter, respondent and her students occupied a small classroom. The record clearly indicates that respondent's classroom is rectangular in shape, *measuring 23 feet, five inches by 15 feet, ten inches*. (Initial Decision at 9) The evidence further shows that respondent's desk was positioned parallel to the longer wall. The students' desks, also situated parallel to the longer wall, faced inward toward respondent's desk, as they together occupied a space *and viewing range* that is, at most, merely 15 feet, ten inches in depth. (R-1)

Furthermore, only nine students were present on March 2, 2001, (T3:45) and respondent was fully aware that her students frequently acted out and demonstrated an inability to interact in a socially acceptable manner. (T6:71,77-79) Indeed, respondent testified that on this Friday afternoon, M.O., who is typically hyperactive, was particularly "wound up" (T6:56), jumping out of her seat. (T6:61-62) At one point, respondent heard a student giggling; she noted that it was J.S., whom she described as "our class giggler" prone to "usually doing some kind of prank\*\*\*" (T6:58) After a brief verbal exchange with J.S., respondent avers

I got up from my desk, walked around to the front of my desk where J. was standing right in front of me. And I looked him straight in the face and I said, "J., okay, you can't afford to get in any trouble. Now you've done so well. Do you want to end up getting in trouble now." He said, "Mrs. Noone, I don't want to get in trouble now. I want to graduate this year." And I'm -- have eye to eye contact that the kid seemed really sincere, so I took him on

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<sup>3</sup>See also, *In the Matter of the Tenure Hearing of Carmen Quinones*, 1996 N.J.A.R. 2d (EDU) 649 where a physical education teacher was held responsible for leaving a student in a park and for leaving her class unattended.

his word. I did not see anything else out of the ordinary that was going on. So I sat back --- went back to my seat and sat down. (T6:58-59)

Respondent also stated that she was not aware at the time that J.S. had moved his chair to block her view (T6:61) and his entire body was not in her sight the entire time. (T6:71) Although she maintains she saw nothing unusual during this class period, (T6:59, 71) respondent also acknowledged:

I believe something occurred, yes, and that I didn't see it. As far as exactly how many instances or how long they were, I -- the testimony is conflicting, and I can't really say. I believe something did happen. (T6:97)

Thus, under these circumstances, where only nine students were present, where respondent was faced with both visual and audible clues within this limited space, and where her students were known to frequently act out, she should have been alerted to potential concerns. Having failed to duly take charge of her classroom that day by at least investigating these signals, either because she did not think them to be sufficiently alarming or did not want to confront possible disciplinary problems during her last period on a Friday afternoon, respondent must accept responsibility for the misconduct of her students. Consequently, the Commissioner specifically rejects the ALJ's view that blame for this incident "must be laid at the feet of the students themselves \*\*\*" who cleverly victimized their teacher. (Initial Decision at 16) The students ranged in age from 13-15 years old. Respondent, on the other hand, is a seasoned educator who, as such, knew or should have known that, by virtue of her position, she is entrusted by the school and by parents with protecting the well-being of her students. The Commissioner concludes, therefore, that respondent failed to adequately monitor and supervise her pupils on March 2, 2001 during tenth period, and the Board's charges of unbecoming conduct and other just cause are sustained.



## PENALTY

The Commissioner finds it unquestionable that teachers hold a position demanding public trust. *In the Matter of the Tenure Hearing of Jeffrey Wolfe, School District of the Township of Randolph, Morris County, 1980 S.L.D. 721, 724, citing In the Matter of the Tenure Hearing of Ernest Tordo, School District of the Township of Jackson, Ocean County, 1974 S.L.D. 97, 98.* Although he recognizes that respondent's failure to exercise the vigilance and care requisite of her position enabled her young students to engage in dangerous and harmful activities that cannot be tolerated in a classroom, the Commissioner also recognizes that, a determination of fitness for a particular position in a school system requires a balancing of interests. *In the Matter of the Tenure Hearing of Arlene Dusel, School District of the Borough of Sayreville, Middlesex County, 1978 S.L.D. 526, 531.*

In this connection, the Commissioner is required to consider that respondent was employed by the Board for 12 years and the record reflects a teacher who has generally performed satisfactorily and without prior incident. However, notwithstanding that this is, apparently, a single occurrence in an otherwise unblemished record, and even acknowledging that on March 2, 2001 during tenth period class, respondent was providing instruction to selected students and was momentarily distracted by the sight of smoke outside her window, the Commissioner is nonetheless compelled to assign a penalty in this matter that both impresses upon respondent the seriousness of her culpability in the incident underlying the sustained tenure charges and acts as a deterrent to future omissions of this type.

Accordingly, the Commissioner modifies the Initial Decision as set forth above, and orders that respondent shall forfeit the 120 days' salary already withheld, and shall be denied her increment for the 2002-2003 school year.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: August 16, 2002

Date of Mailing: August 16, 2002

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<sup>4</sup> 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.