

IN THE MATTER OF THE TENURE :
HEARING OF ANTHONY ASHLEY, :
STATE-OPERATED SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF THE CITY OF JERSEY CITY, : DECISION
HUDSON COUNTY. :
_____ :

SYNOPSIS

The District certified tenure charges of unbecoming conduct against respondent high school teacher for allegedly engaging in violent behavior towards a student and hostile, disrespectful and uncooperative conduct towards the school principal.

In light of the record and the testimony of witnesses, the ALJ determined that respondent was guilty of unbecoming conduct in his language and physical aggression against student T.B. and his hostile disrespect towards the principal when he was questioned about the incident. Moreover, the ALJ found no extenuating circumstances or mitigating factors to excuse respondent's behavior since respondent had only five years of service in the District and he exhibited conduct that was a flagrant deviation from the civil behavior expected of a professional teacher. The ALJ concluded that respondent's behavior warranted his removal from employment in the District.

The Commissioner adopted the findings and determination in the Initial Decision based upon the record and the credibility assessments of the ALJ. The Commissioner ordered respondent dismissed from his position as a tenured teacher in the District as of the date of this decision and forwarded a copy of this decision to the State Board of Examiners for action as it deems appropriate.

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 (OAL) have been reviewed. Respondent requested, and was granted, an extension of time to submit exceptions in this matter based on the parties' delayed receipt of the Initial Decision; the District filed a reply to the exceptions.

In his exceptions, respondent challenges, *inter alia*, a number of the factual findings and credibility determinations rendered by the Administrative Law Judge (ALJ), essentially arguing that Ms. Cooper, the District's pivotal witness, is prejudiced against him and her testimony should be rejected in its entirety. (Respondent's Exceptions at 2, 3, 6, 7)

Respondent further objects to the ALJ's finding that he has a tendency toward violence. Here, although respondent admits that "[h]e did in fact state at one point in time that he restrained himself from becoming physical***," he claims that the ALJ took his statement out of context. "Clearly," respondent explains,

that should have been interpreted to mean he restrained himself from physically moving T.B., or initiating any physical contact with her, not [from] physically assaulting her, which appears to be the inference the Judge is making.*** (*Id.* at 4)

Finally, respondent contends that termination of employment is not warranted, inasmuch as there has been no prior discipline and “[t]here is conflicting testimony as to what happened on this date.” (*Id.* at 6)

In reply, the District asserts that the ALJ properly credited Ms. Cooper’s testimony, which was essentially consistent with Ms. McKenzie’s testimony, in that both averred respondent “acted violently towards the student, without provocation, and kicked the girl at least once.” (District’s Reply at 3) Indeed, the District notes that as a result of respondent kicking her, T.B. was found to have sustained an injury to a muscle in her thigh.

As to the ALJ’s finding that respondent had “a likely tendency towards physical violence” (Initial Decision at 5), the District contends this finding was properly based, not only on the content of respondent’s testimony on cross-examination, but his demeanor during such questioning. (District’s Reply at 3, 4) The District insists that the ALJ “clearly rejected respondent’s explanation of the incident as accidental and found his testimony to be manufactured and a reflection of a refusal to accept responsibility for his inappropriate conduct towards a student***.” (*Id.* at 5)

Lastly, while acknowledging that respondent has no prior history of discipline, the District underscores that he had worked in the District only five years at the time of this incident. This short employment history, the District argues, “could not in any way serve to offset the violent conduct which respondent exhibited toward the student and his uncivil behavior towards the school Principal.” (*Id.* at 6)

Upon careful and independent review of the record in this matter, and based upon the credibility assessments of the ALJ, *N.J.S.A.* 52:14B-10(c), the Commissioner affirms the

Initial Decision.¹ With respect to respondent's exceptions regarding the facts determined by the ALJ based on the testimony of the witnesses and the credence he ascribed to such testimony, the Commissioner notes that the record before him does not include transcripts of the hearing conducted at the OAL in this matter. Challenges to the factual findings predicated upon credibility determinations made by an ALJ require the party to supply the agency head with the relevant and necessary portion of the transcript. *See In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987). In the absence of transcripts from the hearing, due regard should be given to the person who heard the live testimony and assessed the witnesses' behavior at the hearing. *Close v. Kordulak Bros.*, 44 N.J. 589, 599 (1965).

Accordingly, respondent is deemed dismissed from his position as a tenured teacher with the District as of the date of this decision. A copy of this decision will be forwarded to the State Board of Examiners for action as it deems appropriate, pursuant to *N.J.A.C.* 6:11-3.6.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 6, 2002

Date of Mailing: December 6, 2002

¹ In so doing, the Commissioner observes that the ALJ appears to have adopted the District's arguments in their entirety.

²This 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.