

IN THE MATTER OF THE TENURE :  
HEARING OF JESSE KENDLE, :  
SCHOOL DISTRICT OF THE CITY : COMMISSIONER OF EDUCATION  
OF ASBURY PARK, MONMOUTH : DECISION  
COUNTY. :

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SYNOPSIS

The Board certified tenure charges of unbecoming conduct and other just cause against respondent physical education teacher.

In light of the record and the testimony of witnesses, the ALJ found that the Board did prove by a preponderance of credible evidence that respondent was guilty of directing one student to hit another. Respondent also was found to have exhibited a pattern of engaging in inappropriate physical conduct during the 2000-2001 school year (corporal punishment). The ALJ ordered respondent dismissed from his position.

The Commissioner adopted the findings and determination in the Initial Decision. The Commissioner ordered respondent dismissed from his teaching position as of the date of this decision and directed the matter be transmitted to the State Board of Examiners for action as that body deems appropriate against respondent's certificate.

<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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November 6, 2002

IN THE MATTER OF THE TENURE :  
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The record of this matter, including transcripts of the May 21, 2002 and June 24, 2002 hearings, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's and respondent's exceptions were untimely, pursuant to *N.J.A.C. 1:1-18.4*, having been filed on October 16, 2002 and October 17, 2002, respectively, in response to an Initial Decision mailed on October 2, 2002.<sup>1</sup> Consequently, these are not considered herein.

Upon careful and independent review, the Commissioner concurs with the Administrative Law Judge (ALJ), for the reasons detailed in the Initial Decision, that the Board has sustained its charges of unbecoming conduct and other just cause against respondent by a preponderance of the credible evidence. The Commissioner further agrees with the ALJ that, under the circumstances existing here, where respondent was found to have 1) instructed one elementary student to hit another student (Charge One) and 2) to have used physical discipline

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<sup>1</sup> The Board filed a timely reply to respondent's exceptions. In that respondent's exceptions were not considered, however, the Board's reply to those exceptions was also not considered.

with seven second and third grade students during gym classes, in the form of pushing, grabbing, throwing, “mushing,” or “yoking” these students (Charge Three), dismissal from his position is warranted.<sup>2</sup>

Accordingly, the Commissioner affirms the Initial Decision of the OAL and hereby directs that Jesse Kendle be dismissed from his teaching position with the School District of Asbury Park as of the date of this decision. This matter shall be transmitted to the State Board of Examiners, pursuant to *N.J.A.C.* 6:11-3.6, for action, as that body deems appropriate, against respondent’s certificate.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: November 6, 2002

Date of Mailing: November 8, 2002

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<sup>2</sup> On May 20, 2002, the Board withdrew Count Two of the tenure charges, “[failure] to properly supervise a gym class resulting in the sexual assault of a female student by five (5) male students,” stating that further discovery had revealed exculpatory facts not previously known to the school district. (Initial Decision at 2)

<sup>3</sup> This decision 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.