

157-03

IN MATTER OF THE TENURE HEARING :
OF JOHN E. BENNETT, SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF THE CITY OF ASBURY PARK, :
MONMOUTH COUNTY. :
_____ :

DECISION

SYNOPSIS

The Board certified tenure charges of unbecoming conduct and other just cause against respondent elementary school teacher and sought his dismissal.

The ALJ concluded the matter was moot and ordered the petition dismissed since respondent voluntarily resigned.

In the course of the tenure proceedings, respondent admitted to engaging in a sexual relationship with minor A.C., the conduct underlying one of the charges. Thus, the Commissioner could not consent to dismissing the charges as moot, notwithstanding that respondent resigned. The Commissioner rejected the Initial Decision and remanded the matter to the OAL for further proceedings. The Commissioner directed that a copy of this decision be forwarded to the State Board of Examiners.

April 3, 2003

OAL DKT. NO. EDU 6139-01
AGENCY DKT. NO. 328-8/01

IN MATTER OF THE TENURE HEARING :
OF JOHN E. BENNETT, SCHOOL DISTRICT :
OF THE CITY OF ASBURY PARK, : COMMISSIONER OF EDUCATION
MONMOUTH COUNTY. :
_____ :
:

DECISION

The record of this matter and Initial Decision of the Office of Administrative Law (OAL) have been reviewed. For the reasons set forth below, the Initial Decision of the Administrative Law Judge (ALJ) is rejected and this matter is remanded to the OAL for further proceedings.

This matter was brought before the Commissioner by way of tenure charges certified by the Board on August 21, 2001. Those charges, brought by the Superintendent of Schools, allege that John E. Bennett, a second grade teacher, committed various acts which constitute unbecoming conduct and/or other just cause for dismissal. Specifically, it is averred that on or about June 9, 2001, respondent was arrested by the Asbury Park Police for: possession of a controlled dangerous substance (CDS), namely marijuana, pursuant to *N.J.S.A. 2C:35-5(b)(11)*; possession of a CDS with intent to distribute, pursuant to *N.J.S.A. 2C:35-5(b)(11)*; possession of a CDS with the intent to distribute and/or sell such substance within 500 feet of a public housing project, pursuant to *N.J.S.A. 2C:35-7.1(a)*; and possession of a CDS with intent

to distribute and/or sell such substance within 1000 feet of a public school, pursuant to *N.J.S.A.* 2C:35-7.¹

Additionally, respondent was charged with engaging in a course of conduct of fraternizing with minor females outside the scope of his official duties, constituting unbecoming conduct and other just cause for dismissal. Specifically, the Superintendent attests that in or about September 2000, and other times thereafter, respondent engaged in sexual contact, including, but not limited to, sexual intercourse, with A.C., a 16-year-old female student attending public high school within the Asbury Park School District; brought A.C. to his private residence for purposes unrelated to his official duties; accompanied A.C. to a motel for purposes unrelated to his official duties; met A.C. at the home of R.C., 14-year-old female high school student, for purposes unrelated to his teaching duties; and accompanied A.C. and three other female high school students to a movie for purposes unrelated to his official duties. (Sworn Tenure Charges of Unbecoming Conduct and/or Other Just Cause Against John E. Bennett, at 1-7)

Following transmittal of this matter to the OAL, respondent resigned from his teaching position, effective November 27, 2001. After respondent's motion for dismissal, the ALJ issued an Initial Decision recommending that the matter be dismissed as moot.

Upon careful examination of the record, the Commissioner notes with concern a Petition for Order to Show Cause filed by the Board of Education of the City of Asbury Park before the State Board of Examiners pursuant to *N.J.A.C.* 6:11-3.6(a)(3).² The Superintendent therein attests that Mr. Bennett was arrested for the sexual assault of A.C., a 16-year-old female

¹ The record does not indicate the outcome of the criminal proceedings associated with these drug charges.

² There is no indication in this record what action the State Board of Examiners has taken relative to the petition.

student at that Asbury Park High School, on December 22, 2000, after which he was suspended with pay from his teaching position, pending final disposition of the sexual assault charge. The Superintendent also avers,

Although the criminal charge for sexual assault was ultimately dismissed, ***Mr. Bennett admitted, in his discovery responses in connection with tenure charges brought against him, to engaging in a sexual relationship with A.C. which has continued to date.*** (Petition for Order to Show Cause, December 10, 2001 at 3) (emphasis added)

Under these circumstances, where there is compelling evidence of an admission, obtained in the course of tenure proceedings,³ of the very conduct underlying one of the charges, the Commissioner cannot consent to dismissing the charges as moot, notwithstanding that the teaching staff member has unilaterally resigned.⁴

Accordingly, the Initial Decision is rejected for the reasons expressed herein. The

³ The Commissioner notes that tenure proceedings are expedited by law and, indeed, the discovery process must begin immediately upon the referral of a tenure case to the OAL, which, in this instance, was on or about September 14, 2001. (See *N.J.S.A.* 52:14B-10.1a; Initial Decision at 2.)

⁴ *Cf.*, *In the Matter of the Tenure Hearing of Irvin Kotkin*, 95 *N.J.A.R.2d* (EDU) 431, wherein respondent's retirement from his position *after* his hearing at OAL, but *prior* to the issuance of an Initial Decision by the ALJ, did not render the *charges* moot, thereby requiring their dismissal. The Commissioner therein recognized the serious nature of the charges which must be viewed in light of his concern and obligation regarding the safety and integrity of the schools statewide "and the fact that an individual's retirement from one district does not necessarily preclude subsequent employment in other school districts of the state." The Commissioner, therefore, found that "in matters of this nature, [he] cannot permit an individual's retirement to effectively allow him to sidestep adjudication of such charges on their merits.***" *Kotkin, supra*, at 438; *see, also, In the Matter of the Tenure Hearing of Jerry Barshatky, School District of the Freehold Regional High School District, Monmouth County*, State Board decision May 1, 1996, wherein the State Board determined that tenure charges, already certified and litigated against the respondent, should not be dismissed as moot following respondent's retirement. Rather, the State Board found that although the matter did not involve a settlement or withdrawal of the tenure charges, respondent's motion to dismiss the charges as moot, based upon his unilateral retiring following the completion of the tenure hearing, should be subjected to no less scrutiny than a proposed settlement or withdrawal of tenure charges, which may be granted by the Commissioner only upon a finding that the settlement or withdrawal is in the public's interest. *Barshatky, supra*, slip. op. at 4.

Commissioner hereby remands this matter to the OAL for adjudication of the charges on the merits. A copy of this decision shall be forwarded to the State Board of Examiners.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: April 3, 2003

Date of Mailing: April 3, 2003

⁵ 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.*