

IN THE MATTER OF THE TENURE HEARING :
OF WILLIAM BLUST, SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF WATCHUNG BOROUGH, SOMERSET : DECISION
COUNTY. :
_____ :

SYNOPSIS

The Board certified tenure charges of unbecoming conduct and insubordination against respondent middle school teacher for alleged inappropriate comments and touching.

The ALJ found that students, especially female students, felt uncomfortable in respondent's classroom that had an atmosphere of sexually discriminatory conduct. Respondent himself admitted his habit of making comments regarding students' appearance and bodily characteristics and touching their shoulders, but he considered such habits innocent. The ALJ concluded that respondent did make inappropriate remarks and he was warned by his supervisor in June 2000 to be careful as to his actions and comments. The ALJ also concluded that he inappropriately touched female students, but not in an overtly sexual manner since the warning. The ALJ determined to follow the concept of progressive discipline. The ALJ ordered forfeiture of 120 days' pay withheld from him and the forfeiture of any increments due him for the 2001-02 and 2002-03 school years. Any further misconduct could lead to dismissal.

The Commissioner adopted the Initial Decision as his own and directed forfeiture of the 120 days' pay, as well as any increments due him for the 2001-02 and 2002-03 school years.

<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>

May 20, 2004

IN THE MATTER OF THE TENURE HEARING :
OF WILLIAM BLUST, SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF WATCHUNG BOROUGH, SOMERSET : DECISION
COUNTY. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and the Board’s reply thereto¹ are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record, which included transcripts from the hearing conducted on September 22 and September 24, 2003 at the OAL, together with exhibits, post-hearing briefs, exception and reply arguments, and based upon the credibility assessments of the Administrative Law Judge (ALJ), *N.J.S.A.* 52:14B-10(c), the Commissioner concurs with the findings and conclusions of the ALJ.² In so doing, the Commissioner notes that

¹ Although the Board refers to its submission as “Petitioner’s Exceptions,” such submission was not filed within the 13-day period required by regulation, *N.J.A.C.* 1:1-18.4, and the Board did not receive an extension of time in which to submit exception arguments. Rather, it is presumed that because the Board’s filing was submitted within five business days of the filing of respondent’s exceptions, that such filing is, in fact, a *reply* to respondent’s exceptions.

² The Commissioner acknowledges that the ALJ’s credibility determinations are entitled to his deference. *See In the Matter of the Tenure Hearing of Frank Roberts*, 96 *N.J.A.R.* 2d (EDU) 549, 550, citing *In the Matter of the Tenure Hearing of Tyler*, 236 *N.J. Super.* 478, 485 (App. Div. 1989), *certif. denied*, 121 *N.J.* 615 (1989). The Appellate Division has affirmed this principle, underscoring that “[u]nder existing law, the [reviewing agency] must recognize and give due weight to the ALJ’s unique position and ability to make demeanor based judgments.” *Whasun Lee v. Board of Education of the Township of Holmdel*, Docket No. A-5978-98T2, decided by the New Jersey Superior Court, Appellate Division, August 7, 2000, slip op. at 14. Indeed, the Commissioner *may not* reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by

the ALJ has thoroughly summarized the testimony and evidence on both sides, fully explaining how he weighed the proofs before him and why he credited, or discredited certain testimony.

Accordingly, the Initial Decision is adopted for the reasons expressed therein. Respondent shall forfeit the 120 days of pay already withheld, as well as any increments due him for the 2001-2002 and 2002-2003 school years. Further, pursuant to the ALJ's discussion at pages 15 and 16 of the Initial Decision, the Board is reminded of its responsibility "to assure that teaching staff members are provided with professional improvement plans in which actions are developed to correct deficiencies in the staff member's performance, in accordance with the requirements of *N.J.A.C. 6:3-4.3*." *In the Matter of the Tenure Hearing of Barbara Emri, School District of the Township of Evesham, Burlington County, State Board Decision December 3, 2003, slip. op. at 8.*

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: May 20, 2004

Date of Mailing: May 21, 2004

sufficient, competent and credible evidence in the record. (emphasis added)
N.J.S.A. 52:14B-10(c).

³ 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.*