

IN THE MATTER OF THE :
TENURE HEARING OF :
CHRISTOPHER MOLOKWU, :
STATE-OPERATED SCHOOL : COMMISSIONER OF EDUCATION
DISTRICT OF THE CITY OF :
PATERSON, PASSAIC COUNTY : DECISION
:

SYNOPSIS

The Interim Superintendent of the State-Operated School District of the City of Paterson certified multiple tenure charges of unbecoming conduct and insubordination against respondent -- a tenured special education teacher -- for conduct which included, *inter alia*: obtaining a medical leave of absence under false pretenses, during which respondent participated in a hospital practicum for a nursing program; falsely claiming to have attended mandatory staff training; repeatedly making threatening and derogatory remarks to fellow staff members and students; and sleeping while assigned to monitor standardized testing.

The ALJ dismissed several of the charges because they: pertained to incidents prior to respondent's attainment of tenure, were not sufficiently substantiated in the record, or did not rise to a level of conduct unbecoming; the remaining seven tenure charges were sustained as conduct unbecoming pursuant to *N.J.S.A. 18A:6-10*. The ALJ concluded that the petitioner had, by a preponderance of the credible evidence, proven that the respondent engaged in conduct unbecoming a teaching staff member; accordingly, she ordered the respondent dismissed from his tenured teaching position.

The Commissioner agreed with the ALJ that the proven charges -- in the aggregate -- were more than sufficient to warrant the respondent's dismissal, and ordered him dismissed from employment as of the date of this decision. The Commissioner referred the matter to the State Board of Examiners for action against respondent's certificate as that body 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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Upon independent review of the record, the Initial Decision of the Office of Administrative Law (OAL), and the parties' exceptions, the Commissioner has determined to adopt both the administrative law judge's (ALJ) conclusion that respondent engaged in conduct unbecoming a teaching staff member, and her order dismissing respondent from his tenured teaching position.

Respondent, Christopher Molokwu, began employment in the State-operated School District of Paterson on September 1, 1999, and became tenured there on or about September 1, 2002. On August 25, 2004, petitioner filed fourteen tenure charges against respondent, for which the Interim Superintendent certified that there was probable cause to warrant respondent's dismissal. The first of the fourteen charges was subsequently withdrawn by petitioner. The following constitutes a summary of the remaining thirteen charges.

Second Charge

On or about November 29, 2001, respondent forcefully pushed a ninth grade classified student out of the classroom while screaming at him, which action petitioner urged was unbecoming conduct and provided other just cause for dismissal.

Third Charge

On or about November 29, 2001, in the presence of staff, students and the building principal, respondent yelled and cursed when his supervisor asked to see him, and declared that he was not obliged to comply with the supervisor's direction. Later in the day – yelling, and using profanity and threatening language -- respondent first refused to enter his supervisor's office, and then refused to leave. Petitioner urges that this behavior was conduct unbecoming a teacher and constituted other just cause for dismissal.

Fourth Charge

On or about March 11, 2002, respondent entered a colleague's classroom and removed desks. When the colleague later asked for an explanation, respondent became loud, argumentative and threatening, standing close to the colleague, waving his finger in the colleague's face and blocking the exit from the room. This behavior was witnessed by several students. Petitioner urges that it was unbecoming conduct and/or other just cause for removal.

Fifth Charge

On or about September 12, 2002, respondent failed to report to his assigned tenth period detention assignment, leaving four students unsupervised. Petitioner alleges that this behavior constituted conduct unbecoming a teacher and/or other just cause for dismissal.

Sixth Charge

During the Fall of 2002, respondent applied and obtained approval for a three-month medical leave of absence under false pretenses. While maintaining that he was unable to work due to a medical condition that required aggressive interventions, respondent actually attended a nursing program and worked at Hackensack Hospital to complete practicum

requirements. Petitioner contends that respondent's misrepresentation constituted conduct unbecoming a teacher and/or other just cause for dismissal.

Seventh Charge

On or about February 6, 2003, respondent pushed a female student multiple times to remove her from the detention room, which behavior constituted conduct unbecoming a teacher and/or other just cause for dismissal.

Eighth Charge

On or about February 28, 2003, respondent told his supervisor, Department Chairperson David Cozart, that he attended the mandatory staff training for the administration of standardized testing to ninth graders. He had not, in fact, attended the training, and petitioner urges that the falsehood constituted conduct unbecoming a teacher and/or other just cause for dismissal.

Ninth Charge

On or about February 28, 2003, without obtaining permission, respondent dismissed students early from the detention period he was assigned to supervise, and then waited in the school office until the end of the period to sign out for the day. Petitioner contends that this behavior constituted conduct unbecoming a teacher and/or other just cause for dismissal.

Tenth Charge

On or about March 5, 2003, respondent failed to execute his duty as examiner to assist the classified students assigned to his care with their ninth grade assessment test. His proctor, Colleen Breen-Lopez, assisted the students while he slept in the classroom. Petitioner asserts that this behavior constituted conduct unbecoming a teacher and/or just cause for dismissal.

Eleventh Charge

On or about December 23, 2003, without permission, respondent looked through the office mailbox of department chairman Cozart. When advised by Richard Roberto, building principal, that he was not supposed to look through the department mailbox, respondent gestured at Roberto in a threatening manner, accused him of harassment, and threatened to sue him and report him to the NAACP. Respondent continued the behavior later in the day, and told Roberto that he had taped their earlier conversation. Petitioner maintains that this behavior constituted conduct unbecoming to a teacher and/or other just cause for dismissal.

Twelfth Charge

On or about May 5, 2004, in the immediate vicinity of Principal Roberto's office, respondent made threatening statements directed at Roberto. Respondent further attempted to enter Roberto's office, while at the same time continuing the threats and grabbing at something in his pocket. He subsequently left, making derogatory remarks about Roberto as he did so. This behavior, urges petitioner, constituted conduct unbecoming a teacher and/or other just cause for dismissal.

Thirteenth Charge

On or about May 11, 2004, in his classroom with other students present, respondent told a classified ninth grade female student assigned to his care that she was acting like a "street girl," and used other profanity in speaking with her. Petitioner asserts that this was conduct unbecoming a teacher and/or other just cause for dismissal.

Fourteenth Charge

Petitioner contends that charges one through thirteen, when viewed as a whole, constitute an ongoing pattern of conduct unbecoming a teacher and/or other just cause for dismissal.

On September 10, 2004, respondent filed an answer and affirmative defenses denying all the charges, and alleging harassment, discrimination, retaliation, unfair labor practices and a violation of his first amendment speech rights.

A hearing in the OAL took place on April 25, 26, 27 and 28, 2005. Respondent did not testify, presented no independent exhibits, and offered only one witness, John Sullivan, a teacher's assistant who worked with respondent for one or two class periods per day for one or two years. Sullivan stated that he had never observed respondent put his hands on students or use improper language.

At the outset, the Commissioner notes that the ALJ correctly articulated the standard of proof applicable to this case. The burden of proof in a case such as this is on petitioner by a preponderance of the credible evidence. *Atkinson v. Parsekian*, 37 N.J. 143 (1962).

Second, Third and Fourth Charges

In her Initial Decision dated October 26, 2005, the ALJ dismissed the second, third and fourth charges because they pertained to incidents prior to respondent's attainment of tenure. Petitioner does not appear to challenge the dismissal, and the Commissioner cannot disagree with the ALJ's determination. Under N.J.S.A. 18A:28-5 a teacher with the appropriate certificate "shall be under tenure during good behavior and efficiency" after employment in a

district for the requisite time. Petitioner's charges against respondent for events that occurred prior to respondent's attainment of tenure are inconsistent with petitioner's implicit determination -- at the time it renewed respondent's contract for the fourth year, giving respondent tenured status -- that respondent had demonstrated "good behavior and efficiency." However, the Commissioner need not reach the merits of the ALJ's determination about the second, third and fourth charges, because seven of the remaining charges were proven by petitioner and of sufficient gravity to warrant dismissal.

Fifth Charge

The Commissioner concurs with the ALJ that petitioner proved the fifth charge. Petitioner produced witnesses with first hand knowledge of respondent's failure to supervise students in detention on September 12, 2002, and failure to properly request that he be excused. Respondent offered no contradictory evidence.

In his exceptions, respondent directs attention to a question allegedly posed by science teacher Ivan Madjar, the detention supervisor, who was also respondent's union representative. When respondent was found to be absent from the detention room on September 12, 2002, Madjar allegedly asked respondent's supervisor, Charles Cozart, "Where's my boy?" While this choice of words, uttered by Madjar when respondent was not present, could arguably have suggested disrespect, the Commissioner finds that the comment is not germane to the issue of whether or not respondent abandoned his detention duties on the above referenced date.

Sixth Charge

The Commissioner also agrees with the ALJ that petitioner met its burden to prove that respondent willfully abused the sick leave granted to him. Respondent applied for

medical leave on or about September 6, 2002 (P-28). With the application was a note from a doctor with the same last name as respondent (P-28), which note alleged that respondent needed three months off for “aggressive medical interventions” to prevent “continuing progression and end organ damage.”

However, Janet Daly, an instructor at Felician College, testified that respondent was a student in her nursing class from September 3, 2002, to October 2, 2002. (3T109-3T110; 3T113) He attended the lectures and skills labs, and participated in the nursing practicum at Hackensack University Medical Center. (3T110-3T112) The nursing practicums were from 7:00 a.m. to 1:30 p.m., and the skills labs were from 8:00 a.m. to 3:00 p.m. (3T116) On October 2, 2002, after Felician College received calls from petitioner asking whether respondent was a student there, respondent withdrew from the nursing program. (3T113) He submitted a form to Daly that stated “I requested for leave of absent [sic] from my job in order to attend classes during the day, was denied [sic].” (P-85).

Petitioner’s evidence, showing that respondent misrepresented the reasons for the leave time he requested, and used the leave improperly, was unrebutted at the hearing. In his exceptions, respondent points out that he must have been at his school job on September 12, 2002, because that is the day he was found to have abandoned his detention duties. Notwithstanding this apparent discrepancy in instructor Daly’s testimony, the totality of the evidence adequately supports petitioner’s charge of abusing medical leave.

Seventh Charge

The Commissioner agrees with the ALJ that petitioner’s seventh charge, regarding the alleged pushing of a female student, may not be sustained by hearsay testimony

alone. Nor does petitioner appear to challenge the ALJ's determination. Thus, for the reasons expressed in the Initial Decision, the seventh charge is dismissed.

Eighth Charge

The teachers in JFK High School were advised at the end of February 2003, that they were to attend mandatory training in how to administer standardized tests to their students. (2T43-44) The evidence presented at the hearing established that Cozart had asked respondent if he had attended that mandatory training, and respondent had answered in the affirmative. (P-37) However, Barbara Campisi, the school's testing coordinator and Stephen Frith, the guidance director who worked with Campisi on the administration of the testing and teacher training, both testified that respondent did not attend their mandatory training in February/March 2003. (2T23; 2T30-32; 2T37-38; 2T43-44)

The Commissioner agrees with the ALJ that petitioner proved that respondent lied to his supervisor about attending the mandatory training for test administration. The Commissioner rejects the characterization of the text of trial exhibit P-37 that respondent advocates in his exceptions, and finds that, in answer to Cozart's inquiries, respondent represented that he had attended the training. Further, in light of the corroborative testimony of Cozart, Campisi and Frith, the Commissioner is satisfied that, despite the absence of 2003 training attendance sheets, the evidence proves that respondent did not attend the training.

Ninth Charge

Petitioner's ninth tenure charge against respondent was based upon JFK High School Vice-Principal Anna Marie Vannatta's recollection that respondent had dismissed his detention class early on or about February 28, 2003 without administrative permission. She testified that respondent had told her that his reason for dismissing the students early was that he

had had to go to the bathroom. Vannatta could not recall by how many minutes the period was cut short. The ALJ found that this conduct was unprofessional but not “unbecoming.” Petitioner does not appear to challenge the ALJ’s determination, and the Commissioner sees nothing in the record that would justify rejecting it. Accordingly, the ninth charge is dismissed.

Tenth Charge

Colleen Breen Lopez, a physical education teacher who was trained to be a proctor for the administration of standardized testing at JFK High School in March 2003, was assigned to work with respondent, who was serving as a test examiner. (2T63) She testified that after he gave initial instructions for each test section, he would read a newspaper. (2T64) When students asked questions he ignored them. (2T64-65) Multiple times, in the course of reading the newspaper, respondent fell asleep for five to ten minutes and snored. (2T65-66) Lopez woke him up. (2T67-68) At the beginning of one of the sections, which contained a vocational survey, respondent indicated that he did not understand the directions and asked Lopez to read them to the class. (2T68-69) While she did so, respondent fell asleep again. (2T69)

At this point Cozart, respondent’s supervisor, noticed that Lopez was helping the students. (2T69). When he asked Lopez why she was doing so, she brought his attention to respondent -- who was sleeping -- and explained that respondent had asked her to read the directions to the students. (2T69-70) Cozart reassigned Lopez and woke up respondent. (2T71) He put the survey directions in respondent’s hands and asked him to continue where Lopez left off. (2T71) This testimony was un rebutted by respondent.

In his exceptions, respondent both argues that he never acknowledged sleeping and -- in the alternative -- that if he had been sleeping, Cozart improperly woke him in a humiliating fashion in front of the class. Cozart should have excused respondent from duty and

determined whether there was a medical problem. Respondent also argued that he fulfilled his responsibilities by reading the directions at the beginning of two out of the three test sections.

Testing administrator Campisi testified that examiners may not read, drink, eat or chat during the standardized tests. (2T36) The focus must be entirely on the testing. (*Ibid.*) The ALJ found, and the Commissioner concurs, that respondent slept when he should have been administering tests. He did not walk around the room or answer questions. The Commissioner notes further that respondent directed a proctor to perform duties that he should have performed. While the Commissioner does not approve of the manner in which Cozart woke respondent up, the fact remains that respondent both shirked his duties and modeled poor behavior in the presence of his students. If he had a medical problem, it was incumbent upon him to bring it to the attention of his supervisor at the time of the testing. There is nothing in the record that would indicate that he did so.

For the foregoing reasons, the Commissioner adopts the ALJ's determination that petitioner proved its tenth charge.

Eleventh Charge

JFK High School Principal Richard Roberto testified that he observed respondent going through the Special Education departmental mailbox and told him that he had no authority to do so. (3T77) There were confidential items in the mailbox for department chairman Cozart (*Ibid.*), who himself testified that he had never given respondent permission to peruse the mailbox's contents. (1T160) Respondent had his own mailbox. (3T77) (P-63)

The respondent's reaction to Roberto's instruction was to raise his voice, insist that he had a right to go through the mailbox, contend that he was looking for his mail, accuse Roberto of harassment, and threaten legal action. (3T77-78) He left the office and returned

shortly thereafter with an even angrier demeanor, pointing, yelling and making threatening comments. (3T78) (P-63)

In his exceptions, respondent pointed out that although a secretary was supposed to have witnessed the incident, petitioner did not call the secretary as a witness. He urges that there is consequently no “confirmation” of the manner in which respondent gestured or behaved toward Roberto. However, the ALJ apparently found Roberto’s testimony credible, and respondent offered no contradictory evidence.

The Commissioner will not reject the ALJ’s determinations concerning the 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 sufficient, competent, and credible evidence in the record. *S.D. v. Division of Medical Assistance and Health Services and Monmouth County Board of Social Services*, 349 N.J. Super. 480, 484 n.1 (App. Div. 2002). The Commissioner’s review of the record reveals no such defects.

The Commissioner concurs with the ALJ’s findings that respondent’s perusal of the department mailbox, and his reaction when his principal told him to stop, constituted insubordinate and unbecoming conduct.

Twelfth Charge

Another incident of insubordination by respondent was described in the testimony of both Roberto and Madjar, respondent’s union representative. At a meeting on April 30, 2004, attended by Roberto, Vice-Principal Kathy Kellan, respondent and Madjar, respondent was given a letter advising that his abandonment of his assignment on parent conference night was a breach of his contractual duties and could result in discipline. (P-70; P67) Another appointment was set up to allow respondent to prepare a rebuttal. (3T102)

On May 3, 2004, respondent and Madjar returned to Roberto's office with respondent's rebuttal. (3T103) Madjar testified that Roberto listened to respondent explain why he wrote the rebuttal letter, accepted it with a polite "thank you," said he would review it later, and brought the meeting to a close. (3T104-105) Madjar believed that respondent was not satisfied and "started to say things." (3T105). "Things got a little out of hand." (*Ibid.*) Respondent took steps back into Roberto's office, and Roberto went behind his desk. Madjar placed himself between the two men, escorted respondent out of Roberto's office, and "had a little tough time calming him down." (*Ibid.*) Madjar characterized respondent's statements as aggressive, irrational and threatening, and opined that Roberto said nothing to incite such behavior. (3T106-107)

Respondent offered no evidence to rebut the foregoing facts presented at the hearing. Nor is there anything of substance in his exceptions to contradict the ALJ's determination that respondent's behavior on May 3, 2004 was insubordinate. Accordingly the Commissioner adopts the ALJ's determination that petitioner has proven the twelfth charge.

Thirteenth Charge

The Commissioner agrees with the ALJ that petitioner's thirteenth charge may not be sustained by hearsay testimony alone. Nor does petitioner appear to challenge the ALJ's determination. Thus, for the reasons expressed in the Initial Decision, the thirteenth charge is dismissed.

Fourteenth Charge

As to this charge of an ongoing pattern of unbecoming conduct, the ALJ wrote that "Charge Fourteen is sustained in part and dismissed in part. She further found, on the basis of all the facts and controlling law, that petitioner had proven that respondent had engaged in

conduct unbecoming a teaching staff member. The Commissioner specifically finds that on basis of substantiated tenure charges five, six, eight, ten, eleven and twelve, that petitioner proved the fourteenth charge of an ongoing pattern of unbecoming conduct.

In his exceptions, respondent alleges that he was treated with disrespect by his colleagues in general and by his supervisor, Cozart, in particular. He urges that the testimony of petitioner's witnesses be regarded as lacking in credibility, due to this alleged animosity. The Commissioner finds respondent's argument unpersuasive. Respondent made three references to the record: one involving the inappropriate remark made in jest by union representative Madjar, one involving the way Cozart woke him up during the standardized test administration, and one involving Cozart's unfriendliness when approached by respondent at Cozart's place of worship. Two of the three references have been addressed above. The third is not significant in the face of the facts presented at the hearing in this case.

Similarly, the Commissioner is not persuaded by respondent's discussion, in his exceptions, of his evaluations. Respondent himself points out that in April 2003, he received a failing grade on his ability to accept constructive criticism, and a comment that he needed improvement in his relationships with department and general staff members. Notwithstanding that respondent received grades of satisfactory on a March 12, 2004 evaluation, the unrebutted hearing testimony and exhibits about his behavior more than adequately support the ALJ's conclusion that petitioner's charges were proven.

Finally, the Commissioner agrees with the ALJ that the proven charges, in the aggregate -- particularly the sixth, eighth, tenth and twelfth charges -- were more than sufficient to warrant dismissal. Christopher Molokwu is hereby dismissed from his tenured teaching position in the State-Operated School District of the City of Paterson, as of the date of this

decision. This matter is being referred to the State Board of Examiners for action against respondent's certificate as that body deems appropriate.

IT IS SO ORDERED*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 12, 2005

Date of Mailing: December 12, 2005

* The Commissioner's 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.*