

BOARD OF EDUCATION OF THE :
TOWNSHIP OF LYNDHURST, :
BERGEN COUNTY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
JOHN A. BLEVIS, :
RESPONDENT. :

SYNOPSIS

The Petitioning school district requested that the Commissioner compel respondent – a tenured science teacher employed by the district – to submit to a psychiatric and physical examination after he exhibited behavior indicative of a deviation from normal physical and mental health. *N.J.S.A. 18A:16-2*. Respondent denied that he posed any danger to the health or welfare of students or staff in the district.

The ALJ found that: there was ample and credible testimony and evidence that respondent has acted in an irrational and threatening manner toward fellow teachers and his supervisor; this unusual behavior has increased over the past few years; and respondent’s behavior during a staff workshop, in which he refused to consider modifications to the science curriculum to accommodate the needs of mainstreamed special education students, was inappropriate and had a negative impact on his students. The ALJ concluded that the determination of the Board to require a physical and psychiatric examination was reasonable and necessary to insure the safety and well being of students and staff in the district.

After careful and independent review of the ALJ’s findings of fact and the entire record in this matter, the Commissioner adopted the Initial Decision as the final decision, with supplementation. The Commissioner noted that: *N.J.S.A. 18A:16-2* does not require petitioner to show that respondent’s behavior is specifically directed at, or affecting, the students as opposed to the staff; the weight of competent evidence depicts a level of hostility, belligerence and lack of control on the part of respondent that arguably exceeds the bounds of normal mental health; it is therefore not unreasonable for petitioner to seek an evaluation of respondent in order to ascertain whether his antagonism and poor control might spill over to the classroom. In point of fact, the record showed that respondent’s antagonism led to miscommunication about student exams and inadequate instruction to special education students. Accordingly, the Commissioner directed respondent to submit to a psychiatric evaluation and physical examination.

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.

December 5, 2007

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The record, including hearing transcripts and exhibits, the Initial Decision of the Office of Administrative Law (OAL), respondent's exceptions and petitioner's reply thereto have been reviewed. Based upon the Administrative Law Judge's (ALJ) findings of fact, the Commissioner adopts the Initial Decision as the final decision in this case.

The ALJ's findings reveal that respondent began his employment with petitioner in 1986, and has sound academic qualifications. During the past three or four years of his employment, relations between respondent and petitioner's staff have deteriorated. Respondent has filed actions in other forums alleging harassment, a hostile work environment, and wrongful failure to promote him.¹ The actions have named petitioner, both his present and past supervisors, and other district employees. Various members of petitioner's staff have complained of hostile and counter-productive behavior by respondent, and have expressed concerns about respondent's state of mind and physical condition.

¹ Two actions have been dismissed. The Commissioner is not apprised of the disposition, if any, of the federal court action.

The school librarian described encounters with respondent in which he spoke to himself, claimed there were conspiracies against him, turned red and physically shook with anger. At some point in 2006, respondent began secretly taping conversations with his colleagues.

Various teachers reported that respondent was demeaning to women, smirking and leering into their classrooms when he had hall duty. He clearly held his female supervisor – Madalena Zak – in disregard, for he was reported to have made negative remarks about her during staff meetings and in front of students. One of the teachers in respondent’s school remembered occasions on which respondent came to her room, accused Zak of lying, and conducted an agitated, one-sided conversation about Zak’s alleged falsehoods.

A number of petitioner’s staff observed an incident in October 2006 in which respondent’s department became disruptive and disquieting. The setting was a workshop which was apparently planned to discuss how best to integrate mainstreamed special education students. Respondent was against mainstreaming the students, and refused to listen to suggestions by the special education teachers as to how the science curriculum might be modified to accommodate the special education pupils. Various accounts of the incident described respondent as loud, obnoxious, and disruptive. He was reported to have muttered that the workshop was a waste of time. When asked to leave, he tore up the workshop materials.

Testimony and evidentiary materials disclosed a number of ways in which rigidity and uncooperative behavior led to difficulties between respondent and colleagues. He reportedly would not work with another science teacher to develop a laboratory curriculum or to enforce measures to keep the shared laboratory clean. He also failed to follow the same protocol as the other Earth Science teacher in the mid-term exam, resulting in his students neglecting to answer the essay questions.

The Commissioner notes that the negative impact of respondent’s rigidity and uncooperativeness was not visited exclusively on his co-workers. His students were clearly impacted

by his conduct regarding the midterm exam. The special education students, who had Individualized Education Programs that called for mainstreaming, were not well served by respondent's refusal to develop ways of supplementing the curriculum to allow for their integration into the earth science classes. When respondent was suspended, the substitute teacher who replaced him was apparently able to successfully conduct the integrated classes.

The record also shows that respondent's co-advisor to the student government resigned from the position because of her observations that respondent was so rigid and controlling that he did not allow the students to direct activities on their own. The students' interest in student government dwindled and the student government became defunct. Further, the level of antagonism directed by respondent towards various colleagues – purportedly at times in the presence of students – must necessarily have had an impact on the environment in which the students were required to work and learn. The magnitude of respondent's hostility is reflected in the letters from two teachers advising that they were afraid of respondent and would not work at the high school if he returned.

One of those teachers – who had been required to share a laboratory with respondent – testified that he accused her of falsifying her students' grades, and threatened that he was compiling a file of evidence against her. The other teacher described respondent's above-referenced diatribe about Zak's alleged lies, and about "the girl's club." (Initial Decision at 12) As the tirade progressed, respondent paced, flailed his arms, sweated profusely and generally exhibited a flushed, angry demeanor. He stated that he was "going to get" Zak.² (*Id.* at 15)

Respondent does not appear to challenge the validity of *N.J.S.A. 18A:16-2, per se*. His arguments go to the applicability of the statute to his behavior. (Respondent's Exceptions at 10-12) At the outset, the Commissioner notes that respondent was given the notice and hearing to which he was entitled, and respondent does not appear, in his exceptions, to argue otherwise. The Commissioner also finds that petitioner met its burden to make a showing that respondent's

² This comment was conveyed to Zak and was, not surprisingly, a factor in Zak's discomfort with respondent.

behavior deviated significantly from the behavior one would expect from an individual in normal mental health. Having made that showing, it was incumbent upon respondent to rebut same with competent evidence. Based upon the facts articulated above, and found by the ALJ, the Commissioner concludes that respondent was not able to rebut petitioner's showing.

Respondent's exceptions address four "points." First, respondent argues that it was error for the ALJ to conclude that respondent had the burden of proof to show that his behavior was not a deviation from normal physical and mental health. Because the Commissioner concludes that petitioner made the necessary showing that respondent's behavior reflected a deviation from normal mental health, the question of who bore the burden of proof is academic, and will not be addressed.

Second, respondent refers to a number of facts that the ALJ allegedly overlooked:

- a. Respondent was allowed to take students on a field trip that took place after petitioner had voted to compel the psychiatric exam;
- b. Petitioner's district superintendent failed to investigate respondent's complaints of harassment and humiliation by his then new supervisor – Zak;
- c. The above referenced conference concerning modification of the science curriculum was allegedly meant to cover possibilities for the 2007-2008 school year, so the students could not have been harmed by his refusal to modify the curriculum for the 2006-2007 school year;
- d. If the ALJ had admitted into evidence all of respondent's evaluations [dating back to 1986], they collectively would not have suggested that he had become more confrontational and erratic over the past three to four years;
- e. Respondent was never "formally charged or disciplined;"
- f. The high school principal testified that she personally had never witnessed unusual behavior by respondent and did not feel threatened by him;

- g. The ALJ erred in finding that respondent's two prior legal actions were dismissed: one was dismissed on procedural grounds and the other – an unfair labor practice charge at PERC – was resolved in favor of respondent;
- h. Respondent secretly recorded Zak after his complaints to the administration about her were ignored. The ALJ should have neither excluded the tapes nor speculated that the secret recordings suggested mental instability;
- i. Respondent's failure to complete grading of midterm exams was due to the timing of respondent's suspension; and
- j. Because Laura Venner – the substitute who took over respondent's classes – did not have her certificate to teach science, the ALJ should not have given credibility to her testimony that she was able to effectively modify the curriculum to teach the special education students who were integrated into the earth science classes.

The Commissioner finds that – even if assumed true - none of the foregoing materially undermines the evidence which petitioner presented or affects the issues to be decided in this case.

Third, respondent cites to *Kochman et al. v. Keansburg Board of Education et al.*, 124 N.J. Super. 203 (Ch. Div. 1973) for the proposition that it is evidence of harmful, significant deviation from normal mental health *that affects the teacher's ability to teach, discipline or associate with children* that triggers a board of education's authority to compel a psychiatric evaluation. *Id.* at 212. (Emphasis added) There is no question that *Kochman* and other cases have so found. However, a board's authority to compel a psychiatric examination is grounded in *N.J.S.A. 18A:16-2*, which

states, in pertinent part:

Every board of education may require its employees and shall require any candidate for employment who has received a conditional offer of employment to undergo a physical examination. The board may require individual psychiatric or physical examinations of any employee whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health.

Thus, a board has the authority to direct an employee to undergo a psychiatric evaluation if it perceives that the employee is manifesting behavior that deviates from normal health. There is no explicit mandate for the board to prove that the employee's aberrant behavior has been specifically directed toward students. The protection of students is an obvious rationale for the statute. However, there is nothing in the statute that prevents a board from determining that hostile and abnormal behavior directed by one teacher towards several others, and outbursts of temper displayed on multiple occasions warrant a psychiatric evaluation, including an assessment of the likelihood that respondent's control could further deteriorate, and that his negative behavior could be visited upon students.

Finally, respondent contends that the accusation that he left students unattended one afternoon after school, even if true, does not implicate his mental health. If anything, it suggests incompetence or insubordination. The Commissioner agrees that this contention may have merit. It is, however, not material to the ultimate issue in this matter.

The weight of the competent evidence adduced at the hearing in the OAL abundantly depicts a level of hostility, belligerence and lack of control on the part of respondent that arguably exceeds the bounds of normal mental health. It was not unreasonable for petitioner to seek an evaluation of respondent to ascertain the likelihood that his antagonism and poor control might spill over to the classroom.

Moreover, as mentioned above, respondent's contempt for his colleagues resulted in inadequate communication about the midterm examination, which poor communication resulted in the failure of respondent's students to finish the exam. His rigidity interfered with the integration of special education students into his science classes, and his antagonism toward his colleagues poisoned the academic atmosphere in the school. Thus, his behavior was already affecting the students.

The Commissioner adopts the Initial Decision for the reasons articulated therein, as supplemented by this decision. Respondent is directed to submit to a psychiatric evaluation, and to a physical examination if the psychiatrist so recommends.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2007

Date of Mailing: December 6, 2007

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.*