

IN THE MATTER OF THE TENURE :
HEARING OF CARL A. HILL, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP: DECISION
OF IRVINGTON, ESSEX COUNTY. :
_____ :

SYNOPSIS

The petitioning school district certified multiple tenure charges of unbecoming conduct and endangering the welfare of students against respondent -- a tenured physical education teacher -- for conduct which included, *inter alia*: insubordination toward his supervisors; habitual lateness and absence from work; use of disrespectful and unprofessional language and vulgar gestures towards colleagues; and use of inappropriate language toward a student.

The ALJ found that: petitioner's witnesses were straightforward and credible; the respondent engaged in various incidents of insubordination during the 2004-2005 school year; petitioner's behavior constituted conduct unbecoming a teacher and unprofessional conduct, and fostered a climate of disrespect for his colleagues. The ALJ concluded that the appropriate penalty is removal of the respondent from his tenured teaching position.

Upon careful and independent review of the record, including transcripts of five days of hearing, the Commissioner concurred with the ALJ's findings and conclusion that the charges against respondent have been proven by a preponderance of credible evidence, and that respondent's termination from tenured employment is warranted. The Initial Decision of the OAL was adopted as the final decision in this matter, and the Commissioner directed that respondent be dismissed from employment with the Irvington School District as of the date of this decision. A copy of this decision has been transmitted to the State Board of Examiners for action as that body deems appropriate.

<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 15, 2007

OAL DKT. NO. EDU 5979-06
AGENCY DKT NO. 154-4/06

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions, filed in accordance with *N.J.A.C. 1:1-18.4*, were fully considered by the Commissioner in reaching her determination herein. The Board did not file reply exceptions.

Respondent's exceptions mirror his post hearing brief advanced below; it is determined that the arguments raised therein were either satisfactorily addressed or belied by the Administrative Law Judge's (ALJ) decision and, therefore, these will not be revisited here.

Upon careful and independent review of the record of this matter, which includes transcripts of the five days of hearing at the OAL,¹ the Commissioner concurs with the ALJ's findings and her conclusion that the Board has proven its charges against respondent by a preponderance of the credible evidence and that termination from his employment is warranted. In so determining, the Commissioner has given full consideration to all evidentiary proofs which comprise the record and recognition to the

¹ Hearing was held on August 14, 15, 21, 28 and 29, 2006.

particular importance of the ALJ's assessment of the credibility of the witnesses. Such being the case – and the ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before her, and having made findings of fact based upon their testimony – the standard governing the Commissioner's review is clear and unequivocal:

The agency head 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 sufficient, competent, and credible evidence in the record.

(*N.J.S.A.* 52:14B-10(c))

The Commissioner's considered review of the entire record before her provides no basis whatsoever for alteration of the ALJ's determinations.

With respect to the appropriate penalty, the Commissioner is mindful, in adopting the conclusion of the ALJ, that the consequences for respondent are serious. "Factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the teacher's prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring." *In the Matter of the Tenure Hearing of Deborah Suitt-Green, State-operated School District of the City of Newark, Essex County*, decided by the Commissioner October 14, 1997, slip. op. at 32, citing *In re Hearing of Ostergren, Franklin School District*, 1966 *S.L.D.* 185, 187; *In re Hearing of Kittell, Little Silver School District*, 1972 *S.L.D.* 535, 541; *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967). In the instant matter, the Commissioner can find scant evidence on this record that would otherwise militate against the ALJ's recommended penalty of termination. The

Board's charges establish that petitioner's chronic lateness without notice, insubordinate attitude and conduct toward his supervisors, use of disrespectful language and vulgar gestures toward fellow teaching staff members, and use of inappropriate language toward a student occurred over the last two years of respondent's relatively short service with the Board.² Particularly unsettling here is respondent's failure to take responsibility for *any* problematic behavior on his part, let alone be repentant for it. Respondent's response to the unbecoming conduct charges ranged from complete denials of the behavior alleged by the Board and blaming the New Jersey Transit system for his habitual lateness, to rationalizations based on the bad behavior or ill-motives *of others*. Neither does the Commissioner find that the record before her provides any promise that respondent will, in the future, eliminate his chronic lateness without notice,³ improve his interpersonal relationships with fellow teachers and students or yield to the authority of the administration without continued conflict.

The Commissioner recognizes that "teachers carry a heavy responsibility by their actions and comments in setting examples for the pupils with whom they have contact." *In the Matter of the Tenure Hearing of Blasko, School District of the Twp. of Cherry Hill*, 1980 *S.L.D.* 987 at 1003. As such, some actions are "so foreign to the expectations of the deeds and actions of a professionally certificated classroom teacher as

² Respondent testified that he has worked for the Irvington Board of Education for six years. (Hearing Transcript, 8/28/06, p. 38)

³ The impact of this particular conduct on students is well recognized:

[f]requent absences of teachers from regular classroom learning experiences disrupt the continuity of the instruction process. The benefit of regular classroom instruction is lost and cannot be entirely regained, even by extra effort, when the regular teacher returns to the classroom. Consequently, many pupils who do not have the benefit of their regular classroom teacher frequently experience great difficulty in achieving the maximum benefit of schooling.

(In the Matter of the Tenure Hearing of Catherine Reilly, School District of the City of Jersey City, Hudson County, 1977 S.L.D. 403, 414)

to raise manifest doubts as to the continued performance of that person in the profession.”
(*Ibid.*) Based on the total record before her, the Commissioner finds that such is the case
in this matter and the ALJ’s recommended penalty of removal is appropriate.

Accordingly, the Initial Decision of the OAL is adopted for the reasons
articulated therein. The Commissioner hereby directs that Carl A. Hill be dismissed from
his tenured employment with the Irvington School District as of the date of this decision.
A copy of this decision shall be transmitted to the State Board of Examiners for action as
that body deems appropriate.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2007

Date of Mailing: May 15, 2007

⁴ 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.*