

IN THE MATTER OF THE TENURE :
HEARING OF CAROL ZIZNEWSKI, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP : DECISION
OF EDISON, MIDDLESEX COUNTY. :
_____ :

SYNOPSIS

The petitioning Board certified charges of insubordination and conduct unbecoming against respondent – a tenured elementary teacher and reading specialist – for: failing to provide services to her students, engaging in improper conduct toward other staff members and supervisors, and disregarding administrative directives and Board policies. The extensive record of this matter includes transcripts of 43 days of hearing at the OAL, the testimony of 22 witnesses, and 193 exhibits from the petitioning Board documenting multiple incidents of harassment and intimidating and threatening behavior demonstrated by respondent against her coworkers, as well as an on-going pattern of defiant behavior and disrespectful attitude toward respondent’s building principal. Respondent denied the charges.

The ALJ found, *inter alia*, that: the prolonged and unusual number of hearing dates in this matter afforded the parties exhaustive opportunity to fully present their cases; respondent’s claim that she is exempt from the tenure statute as it applies to teachers because she was a reading specialist is without merit; the Board’s witnesses presented credible testimony, amply supported by documentation, while respondent’s testimony was self-serving, contradictory, and not credible; respondent failed to follow district policies regarding Basic Skills and ESL instruction, thereby denying services to children in need; and overwhelming evidence supports the Board’s contention that respondent, over many years, engaged in repeated and unprovoked verbal abuse and intimidation against co-workers and supervisors, creating a hostile work environment. The ALJ concluded that the Board has carried its burden to prove the charges against respondent, and ordered her dismissed and removed from tenured employment.

Upon independent review of the record, the Commissioner concurred with the ALJ’s findings and adopted the Initial Decision of the OAL as the final decision in this matter. Respondent was dismissed from her tenured employment, and the matter transmitted to the State Board of Examiners for action against respondent’s certificate(s) 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>

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the respective exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by respondent and the Board of Education (Board), and the Board's reply to respondent's exceptions.¹

The respondent's exceptions substantially reiterate the substance of her post-hearing submission at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously sustained the Board's charges. Respondent asserts that: 1) the ALJ erred in concluding that the respondent willfully refused to provide services to students; 2) the ALJ erred in finding respondent guilty of other instances of unbecoming conduct; 3) the ALJ erred in finding that respondent was guilty of insubordination; 4) the tenure charges filed against respondent were technically deficient; and 5) the taking of respondent's tenure is too severe a penalty. Respondent generally maintains that she never

¹ Subsequent to her counsel's submission of respondent's exceptions on May 19, 2010, Ms. Ziznewski submitted a letter to the Commissioner dated June 22, 2010, attempting to appeal the ALJ's April 1, 2010 decision denying respondent's motion to be relieved as counsel. Any appeal of the ALJ's denial of the motion to be relieved of counsel should have been made to the Office of Administrative Law as an interlocutory appeal pursuant to *N.J.A.C. 1:1-14.10(j)5*. It should also be noted that correspondence from individuals who are represented by an attorney is not permitted. Therefore, the Commissioner did not consider Ms. Ziznewski's June 22, 2010 letter.

refused to provide basic skills instruction to any students during her employment as a reading specialist. In her exceptions, respondent also points out that she has received positive evaluations and that she was never warned that her conduct was inappropriate. Respondent further suggests that the tenure charges were only brought against her because she challenged educational decisions made with respect to certain students, and she exercised her personal rights in previous disputes with the school district.

The Board's reply also reiterates the positions advanced in its post-hearing submission at the OAL and in its original exceptions, which urged the adoption of the Initial Decision. In its reply, the Board again cited examples of students who were refused basic skills instruction by the respondent. The Board further emphasized respondent's numerous acts of inappropriate conduct towards her colleagues and supervisors that constitute unbecoming conduct and insubordination. In reply, the Board also contends that respondent's exceptions are a distorted narrative of the 2006-2007 and 2007-2008 school years at John Marshall Elementary School.

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the 43 hearing dates conducted at the OAL between September 2, 2008 and December 15, 2009, the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct and insubordination. As a threshold matter, the Commissioner agrees with the ALJ that respondent's argument that the tenure charges were deficient because the charges only named her as a teacher as opposed to a reading specialist is without merit. For purposes of a violation of the tenure removal statute, *N.J.S.A. 18A:6-10*, it is irrelevant whether respondent had tenure as both a reading specialist and a teacher.

The Commissioner finds respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by him in weighing the testimony and evidence, and in concluding that the record overall overwhelmingly supported the Board's charges. Notwithstanding respondent's contentions to the contrary, the Commissioner finds no basis in the record, which includes transcripts of all 43 days of hearing, to reject either the ALJ's recitations of testimony or his determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before him and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

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 also finds that the ALJ's fact-finding analysis and conclusions as to the truth of the Board's allegations and the characterization of respondent's behavior as insubordinate and unbecoming conduct to be fully supported by the record and consistent with applicable law.

The extensive record includes credible evidence of multiple confrontations that the respondent had with other staff members, at times in front of the students, during which respondent engaged in loud, intimidating and threatening behavior that created an uncomfortable and tense work environment. The Board also proved that respondent engaged in an on-going pattern of exhibiting a defiant and disrespectful attitude toward the authority of her building principal. The details and history of respondent's inappropriate behavior towards other teachers, supervisors and school principals that amounted to unbecoming conduct are extensively outlined in the Initial Decision and need not be repeated here.

With respect to her performance, respondent repeatedly refused to conform to the overall district policy of balanced literacy, and instead continued to maintain her own method of teaching. Additionally, there were several documented incidents of unbecoming conduct including, respondent's failure to complete the appropriate reading assessments; the willful failure to provide basic skills services to certain students; and a total inability to work with the classroom teachers to properly identify, service and help those students in need of basic skills instruction. It is clear from the record that because of respondent's conduct the basic skills program was not being efficiently and effectively implemented at the John Marshall School. Finally, respondent routinely disregarded requests of her supervisors and boldly refused to even accept that the elementary supervisors were her supervisors, despite the fact that the administration repeatedly informed respondent that the elementary supervisors were indeed her direct supervisors. This type of behavior by a teaching staff member undoubtedly amounts to unbecoming and insubordinate conduct that cannot be tolerated.

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that the "[f]actors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the individual'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; *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). It is also well recognized that by virtue of the unique position they occupy educators must be held to

an enhanced standard of behavior. As was succinctly stated in *In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional*, 1972 S.L.D. 302,

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[Teachers] are professional employees to whom the people have entrusted the care and custody of tens of thousands of school children with the hope that this trust will result in the maximum educational growth and development of each individual child. *This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.* (emphasis added)

The Commissioner recognizes that the charges in this matter are serious in nature and finds that the inappropriate behavior of respondent necessitates the termination of her employment. Respondent's unbecoming conduct and insubordination was not the result of an isolated incident, but rather a pattern of egregious conduct that escalated during the 2006-07 and 2007-08 school years which resulted in a hostile, uncomfortable environment at the John Marshall Elementary School. The record in this case is overflowing with examples of unbecoming conduct and insubordination, but the Commissioner finds it most troubling that respondent's attitude, and repeated failure to adhere to district policy, was detrimental to the students who were in need of basic skills instruction.

The record also demonstrates that respondent has been unwilling or unable to improve her inappropriate behavior for the betterment of the school environment. Her responses to the charges against her range from complete denial of the alleged behavior to allegations that such behavior was inconsequential in nature and/or provoked by others, a position which is completely inconsistent with the testimonial and documentary evidence. Finally, the Commissioner does not find that the record before him provides any indication that the respondent will improve her interpersonal relationships with fellow staff members, yield to the

authority of her building principal without continued conflict, or adhere to the mandated procedures and policies regarding the basic skills program. The Commissioner considered respondent's extended employment with the District, and nonetheless determines that the incidents proven to have occurred demonstrate that she is unfit to remain in her position. *Redcay v. State Board of Education*, 130 N.J.L. 369, 371 (Sup. Ct. 1943); *aff'd* 131 N.J.L. 326 (E. & A. 1944).

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from her tenured position with the Edison Township School District. This matter will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 3, 2010
Date of Mailing: August 3, 2010

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (N.J.S.A. 18A:6-9.1)