

IN THE MATTER OF THE TENURE :
HEARING OF LAUREN COOKE, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
TOWNSHIP OF EGG HARBOR, :
ATLANTIC COUNTY. :

SYNOPSIS

The petitioning Board filed tenure charges of conduct unbecoming against respondent Lauren Cooke – a tenured teacher – for allegedly making inappropriate and derogatory racial comments about another staff member and by lying to an administrator during an investigation. The petitioning Board sought revocation of respondent’s tenure and termination of her employment.

The ALJ found that: on two occasions, respondent used racial epithets in reference to another member of the teaching staff, and – based on previous case law – these incidents constitute unbecoming conduct for a teacher; respondent violated school district policy 3281 by engaging in inappropriate staff behavior; respondent’s inappropriate comments were made during school hours, which potentially put young children at risk, created unnecessary tension among teachers, and cast doubt on respondent’s fitness to teach; however, dismissal of respondent from her tenured teaching position is not justified because her conduct does not establish her unfitness to discharge the duties and functions of a teacher since the inappropriate comments were intended to be made in confidence, and were not public statements. Accordingly – based on mitigating and aggravating factors – the ALJ concluded that respondent’s removal from her tenured position is not justified, and ordered that respondent receive a 150 day suspension without pay as appropriate discipline for her unbecoming conduct.

Upon independent review of the record, the Commissioner concurred with the ALJ that respondent is guilty of unbecoming conduct, but her conduct does not justify her termination from employment. The Commissioner therefore concluded that the loss of 120 days salary withheld pursuant to *N.J.S.A. 18A:6-14*, following the certification of tenure charges, plus an additional 30 day suspension without pay is a sufficient penalty to impress upon the respondent the seriousness of her errors in judgment. Additionally, the Commissioner ordered respondent to take coursework on racial sensitivity, at her own cost and expense, during the 2010-2011 school year.

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.

November 22, 2010

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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).

This case involves tenure charges brought by the Board against the respondent Lauren Cooke, a teacher in the Egg Harbor School District. The Board charged the respondent with unbecoming conduct based on two incidents during which the respondent used a racial slur and a racially derogatory comment in reference to another teaching staff member. The Administrative Law Judge (“ALJ”) found that the respondent was guilty of unbecoming conduct, and recommended that the respondent receive a 150 day suspension.

The respondent’s exceptions largely reiterate the substance of her post-hearing submission at the OAL, recasting the arguments therein to support the contention that the ALJ erroneously sustained the Board’s charges. Respondent asserts that the ALJ wrongfully determined that since neither of the two individuals who witnessed respondent’s alleged use of the “N word” and “Aunt Jemima” had any discernable ulterior motive that it automatically means that respondent did in fact use those terms. Respondent maintains that she was equally or even more credible than the other witnesses, and her denial of the use of those phrases should hold more weight. In her exceptions, respondent also contends that the evidence is devoid of any basis for the ALJ’s finding that “Aunt

Jemima” is a racist reference. Finally, respondent argues in the alternative that if the Commissioner determines the charges should be upheld, the penalty should be reduced.

In its exceptions the Board also reiterates the positions advanced in its post-hearing submission at the OAL. The Board urges the Commissioner to adopt the ALJ’s determination that the respondent engaged in conduct unbecoming a teaching staff member, but takes exception to the penalty recommended by the ALJ. The Board maintains that the respondent’s use of the “N word” on one occasion and “Aunt Jemima” on another occasion warrants the dismissal of respondent from her tenured teaching position.

The Board takes exception to the ALJ’s determination regarding the applicable aggravating and mitigating factors in this case. In its exceptions, the Board contends that the ALJ erred in not finding as aggravating factors the fact that the respondent created a hostile work environment and that respondent failed to acknowledge that she used the phrases. The Board also takes exception to the ALJ’s determination that the mitigating factors included the fact that no children or other teaching staff members, including the teacher who was the subject of the comments, heard respondent’s use of the phrases. The Board emphasizes that – although the comments were not heard by others – because of where the comments were made, they could have been heard by both the students and other teaching staff members.

The Board also takes exception to the ALJ’s analysis of the case law with respect to his finding that respondent’s comments did not warrant dismissal, but rather a 150 day suspension. The Board stresses that the respondent’s conduct in this case was more egregious than in cases cited by ALJ, and that the comments were made on two separate occasions, which amounts to a pattern of inappropriate behavior justifying the dismissal of respondent’s tenure.¹

¹ In its exceptions, the Board also seeks clarification as to whether the 150-day unpaid suspension is a form of prospective relief or whether it applies retroactively to the 120-day unpaid suspension already served pursuant to *N.J.S.A.* 18A:6-14, plus an additional 30 days.

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the hearings conducted at the OAL on April 1 and April 16, 2010,² the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct. The Commissioner finds respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ, and taken into account by him in weighing the testimony and in concluding that the record supported the Board's charges. Notwithstanding respondent's contentions to the contrary, the Commissioner finds no basis in the record 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 unbecoming conduct to be fully supported by the record and consistent with applicable law.

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

² The record did not include the transcript from the hearing conducted on December 4, 2009.

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.

The Commissioner recognizes that the charges in this matter are serious in nature and finds that the inappropriate behavior of respondent necessitates the appropriate penalty. While in no way minimizing the seriousness of respondent's infractions, the Commissioner is in accord with the ALJ – for the reasons fully detailed on pages 32-36 of his decision – that under all of the circumstances and considerations existing in this matter, removal of respondent from her tenured position is an unduly harsh penalty.

The ALJ properly determined that the dismissal of the respondent from her teaching position is not justified because the conduct does not establish her unfitness to discharge the duties and functions of her position as a teacher. The notable mitigating factors include the fact that there is no evidence that the respondent has ever been the subject of any discipline during her 16 years with the district; there was no evidence presented that suggested the respondent treated the students inappropriately; her comments were not directed at a student nor did any students hear her comments; and the comments were made during private conversations. Further, the Commissioner disagrees with the Board's contention that the conduct in this matter was more egregious than in other cases where the tenured teaching staff member received a suspension rather than termination. See, *In the Matter of the Tenure Hearing of Adelpia Poston*, Commissioner Decision No. 326-06, decided October 19, 2006; *In the Matter of the Tenure Hearing of Barbara Emri, School District of the Township of Evesham, Burlington County*, Commissioner Decision No. 371-02, decided October 21, 2002; *Jayson H. Burg v. State Operated Sch. Dist. of the City of Newark*, Commissioner Decision No. 649-97, decided December 18, 1997.

Therefore, the Commissioner finds and concludes that the loss of the 120 days salary withheld pursuant to *N.J.S.A.* 18A:6-14, following the certification of tenure charges, plus an additional 30 day suspension without pay is a sufficient penalty to impress upon respondent the seriousness of her errors in judgment displayed in this matter. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. In addition, to help insure that respondent is able to correct the inappropriate behavior, the respondent is ordered to take coursework on racial sensitivity at her own cost and expense to be completed by the end of the 2010-2011 school year. The coursework will be subject to reasonable review and approval by petitioner, who may apply to the Commissioner if respondent fails to comply with the above articulated terms.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 22, 2010
Date of Mailing: November 23, 2010

³ 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)