

#426-11 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF SUSAN PAREZO, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE BOROUGH : DECISION
OF LAKEHURST, OCEAN COUNTY. :

SYNOPSIS

The petitioning Board certified two charges of unbecoming conduct against respondent – a physical education teacher employed by the district – for a June 2010 incident during which the respondent allegedly balled up pieces of clear tape, placed them on the person of J.H., one of the second graders in her gym class, and allowed and/or encouraged other students to follow her lead, thereby humiliating and embarrassing said student. Respondent also allegedly placed a piece of tape on J.H.’s mouth, and subsequently made false statements denying her role in the incident. The Board sought removal of respondent from her tenured position.

The ALJ found, *inter alia*, that: the incident upon which these tenure charges are based was disturbing and serious; respondent failed to properly consider the consequences of her actions and the impact upon J.H. and the other second graders in the class; respondent’s assertions that her actions were innocent, spontaneous, and in the spirit of fun fail to justify the unsettling behavior that subjected a young student to ridicule and embarrassment; respondent has taught for 21 years, and should have realized that her actions were inappropriate and unacceptable for a teaching professional; respondent’s unwillingness to either own up to her responsibility for her behavior or to appropriately apologize to the victim and his family further demonstrate her failure to maintain her proper role as a leader in the school setting. Accordingly, the ALJ found that – based on the evidence and testimony presented at hearing – the Board met its burden of establishing by a preponderance of the credible evidence that respondent is guilty of unbecoming conduct, and concluded that her behavior warrants dismissal from her tenured employment.

Upon independent review of the record, the Commissioner adopted the Initial Decision as the final decision in this matter. Respondent was dismissed from her tenured employment, and a copy of this decision was forwarded to the State Board of Examiners for action against her 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>

October 12, 2011

OAL DKT. NO. EDU 13216-10
AGENCY DKT NO. 646-11/10

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_____ :

The record of this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. At the request of the respondent, the parties were granted a significant extension of time within which to file exceptions and reply exceptions to the Initial Decision.¹ Both submissions were filed within the extended timelines.

Respondent’s exceptions are essentially a replication of her Post Hearing and Post Hearing Reply Briefs advanced before the Administrative Law Judge (ALJ) below, recasting the arguments therein to support her contention that the ALJ erroneously found the Board had established its charges against her. Respondent additionally challenges the ALJ’s credibility determinations which found the Board’s witnesses to be credible – particularly the young children who testified to different versions of the alleged incident – while finding her testimony unpersuasive. Finally, respondent maintains that the ALJ’s recommended penalty of removal from her tenured position is severe and disproportionate to the charges against her which were “limited to one incident that lasted mere minutes involving an activity that was conducted in a fun and playful atmosphere.” (Respondent’s Exceptions pages 1-70, quote at 63)

¹ The grant of these extensions necessitated the Commissioner seeking an extension of time for the completion of his decision in this matter.

In reply, the Board argues that the ALJ's findings and conclusions were reasonably reached and founded on sufficient credible evidence in the record. As to penalty, the Board concedes that the recommended penalty, while severe, is fully warranted because:

[t]he Respondent is an educated professional who has a duty, not only to educate her students, but to set an example of proper conduct. Such a position requires the trust of the school district who employs her; the trust of the parents whose children she is teaching; the trust of her co-workers; and most importantly, the trust of her students.

The Respondent violated this trust. She used her position to single out and belittle a student in front of his peers; she encouraged her students to stick tape on a fellow student; and she placed tape over the mouth of a child. Perhaps most importantly, when confronted with her conduct unbecoming, the Respondent lied to her supervisors, her peers, her students, and to the trial court. Such a serious violation of trust conduct warrants dismissal. [sic] (Board's Reply Exceptions, pages 1-11, quote at 11)

Upon comprehensive review and consideration of the entire record of this matter, which included transcripts of the proceedings at the OAL,² together with exhibits, post-hearing briefs, and the parties' exception and reply arguments, the Commissioner agrees with the conclusion of the ALJ that the District has established that respondent is guilty of unbecoming conduct warranting removal from her tenured position.

In so determining, the Commissioner finds respondent's exceptions unpersuasive, largely reflecting arguments and objections raised before the ALJ below and clearly taken into account by him in weighing the testimony and evidence, and in concluding that the record overwhelmingly supported the Board's charges. Based on his overall assessment of the Board's witnesses, the ALJ found them to be "highly credible and worthy of belief." It is also especially

² The record contains transcripts of proceedings conducted on April 1 (including a second transcript containing the testimony of J.H. only, which took place in a separate hearing room on the same day), April 5, April 8 (including a second transcript containing the testimony of C.C. only, which took place in a separate hearing room on the same day), April 11 and April 20, 2011.

evident from his decision that the ALJ recognized his obligation with respect to the care which must be taken in evaluating testimony provided by young students. Specifically he explained:

(A)fter having considered and closely scrutinized the oral statements made at hearing by J.H., C.C. and Z.W., and the testimony of Bixby, as well as having considered under the residuum rule the largely corroborating statements made by the fellow students A., J., A., and J. to Hamilton and Davis in their respective investigations..., the much greater weight of the evidence supports the conclusion that Parezo specifically, intentionally and unequivocally affixed tape to the mouth of J.H. and then removed it as Bixby entered the area. The activity was observed by the students, who were clearly in the best position to observe what had happened. As part of the analysis, I carefully considered the answers provided at hearing by J.H. and C.C., neither one of whom had any vested interest in the outcome other than to tell me the truth. Their answers were refreshing and straightforward. I detected absolutely no hesitation on the part of either one of them regarding what they had observed and/or experienced. Similarly, although to a slightly lesser degree I afforded credibility and appropriate weight to the statements of Z.W. as well, even though her vantage point was not nearly as good as the two second graders who were immediately in front of Parezo. (Initial Decision at 51)

In contrast, the ALJ found that respondent's "account of the events is not credible and is not worthy of belief." (Initial Decision at 50) The ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before him, and having made findings of fact based on 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)]

Notwithstanding respondent's arguments to the contrary, the Commissioner finds no basis whatsoever in the record to reject the ALJ's recitations of testimony, his determinations of witness credibility, or his fact finding analysis and conclusions as to the truth of the Board's allegations and the characterization of respondent's behavior as unbecoming conduct.

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. 535, 541; *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967).

While duly considering respondent’s 21 years of apparently unblemished service in the District,³ the Commissioner, nonetheless, is in full accord with the ALJ’s evaluation as to the “disturbing and serious” nature of the incident here:

Based upon all of the relevant proofs, I FIND that [respondent] inappropriately singled out one student, J.H. and made him the butt of her “fun” time in the presence of all of his classroom peers plus the eighth grader Z.W. She then placed tape on his shoulders and fostered and encouraged the opportunity for his fellow students to do the same on him. She then placed a piece of flat tape over his mouth as well as at or immediately near his cheek. And then, at or about the time of the arrival of Kathleen Bixby, the second grade teacher, she removed the tape from the mouth of J.H., all of this being witnessed by the students and Bixby. The tape briefly left a red rectangular mark on the child’s face. Her role in this process as the adult leader was deplorable, whether she felt it was a fun activity or not. The child even received some taunts from his classmates, such as “tape boy.” Despite what Parezo contends, the child J.H. expressed clearly that he was humiliated by the experience and then, as he described it at the hearing, he then felt anger at his teacher for having done what she did. This is hardly a reason to instill confidence in children or their families in the community by the adult educational leadership. [sic] In fact, the child was so upset that he feared going

³ The Commissioner notes with interest the ALJ’s observation that respondent’s long service in the District might in some measure be viewed as a negative factor in light of her behavior. “There was absolutely no excuse for [her]conduct. Perhaps a less experienced teacher could be given some margin of leniency based upon the rationale or justification of immaturity. This was not the case here, however. Given the evolving nature of awareness and sensitivity to such violations of individual rights and the increasingly focused efforts in school districts to address such improprieties against children generally, this experienced teacher should have known much better under the circumstances.” (Initial Decision at 54)

back to school. The impact on the child was significant and distinguishes it from other cases in which innocent play got out of hand. This definitely indicates that damage had been done to the child, whether or not Parezo personally felt it was neither punitive, bullying or malicious. Also, his parents were appropriately and understandably upset with the misconduct by Parezo. Curiously, for all of that, Parezo never even truly apologized to the child for what she had done. Her “apology”, such as it was, was lame and feeble at best. All she had to really say at that time was what Mrs. H. had requested, which was the two magic words: “I’m sorry.” Instead, she gave a response which indicated that she was only sorry for the matter having gone to that point. That hardly sounds like an apology for misconduct, especially where she violated the child so deliberately in front of his peers. The activity may have been fun for Parezo and the other students, but it definitely did not impact similarly for J.H., who was the victim. As a result, she violated the interests of J.H., as set forth in the first charge in this matter...The parent’s reactions demonstrate how upset the entire family was by the incident. And yet, for all that, she never really apologized.

And then, to further compound her inappropriate conduct, Parezo was not truthful with either Superintendent Hamilton or Principal Davis when they conducted their respective investigations with her, which has been set forth specifically in Charge #two herein. (Initial Decision at 49-50)

Finally, particularly disturbing here is respondent’s refusal – even at this late date – to recognize the seriousness of her actions or take responsibility for them. Rather, she continues to view the whole incident as *de minimus* in nature and scope and remains adamant that the Board’s witnesses lied, for one reason or another, about what they saw. Given her steadfast attitude in this regard, the Commissioner is not persuaded that such conduct would not be repeated in the future. Under these circumstances, the Commissioner cannot entertain the prospect of respondent’s return to the District and the resultant potential for the perpetration of an unhealthy educational environment.

Accordingly, the recommended decision of the OAL is adopted for the reasons comprehensively detailed therein. Respondent is hereby dismissed from her tenured teaching position with the School District of the Borough of Lakehurst. 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.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 12, 2011

Date of Mailing: October 13, 2011

⁴ 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*)