

#158-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE HEARING :  
OF ERROL GOODWATER, SCHOOL DISTRICT :  
OF THE CITY OF CAMDEN, CAMDEN COUNTY. :

AND : COMMISSIONER OF EDUCATION

ERROL GOODWATER, : DECISION

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE CITY :  
CAMDEN, CAMDEN COUNTY, :

RESPONDENT. :

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SYNOPSIS

The petitioning school district certified tenure charges of unbecoming conduct, neglect of duty, and insubordination against respondent – a tenured special education teacher – for allegedly striking a student with a computer cord, failing to take the student to the nurse after observing the child’s injured back, using inappropriate language toward his students, and failing to properly aid in the investigation of the incident in question. The respondent asserted that he acted in self defense when accidentally striking the student, whom respondent believed to be aggressive and violent. The Board contends that respondent’s misconduct warrants dismissal from his tenured position.

The ALJ found, *inter alia*, that: respondent struck a student on the back with a cord; video evidence of the incident shows that it was not accidental and he was not acting in self-defense; respondent’s behavior clearly constitutes unbecoming conduct and corporal punishment; no evidence was submitted to support the charges of insubordination or neglect of duty; respondent’s misconduct was not premeditated, but rather an immediate overreaction to a perceived threat; respondent taught for twelve years without exhibiting a pattern of misconduct, and the within matter represents a single, isolated incident in an otherwise unblemished career; the Board presented no evidence to show that respondent’s conduct had an injurious effect on the maintenance of discipline and the proper administration of the school; and the unbecoming conduct did not appear to physically or emotionally harm the student. The ALJ concluded that while respondent’s conduct was unbecoming a teacher, it was not sufficiently flagrant to demonstrate his unfitness as a teacher or to warrant his dismissal. Accordingly, the ALJ recommended suspension and withholding of increments – for the period commencing from respondent’s initial suspension in 2007 until a final decision is rendered in this matter – as the appropriate penalty in this case.

Upon careful and independent review of the record, the Commissioner – while concurring with the ALJ’s findings as to the unacceptability of respondent’s conduct – rejected the ALJ’s penalty recommendation as he found, *inter alia*, that the video evidence clearly demonstrated that respondent’s conduct was cruel and vicious, and sufficiently flagrant to establish his unfitness as a teacher. *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967). Accordingly, the Commissioner dismissed respondent from his tenured teaching position with the Camden City School District. The matter was transmitted to the State Board of Examiners for action as that body deems appropriate.

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.

April 27, 2012

OAL DKT. NOS. EDU 8377-11 AND EDU 9196-11 (CONSOLIDATED)  
AGENCY DKT. NOS. 185-7/11 AND 187-7/11

IN THE MATTER OF THE TENURE HEARING :  
OF ERROL GOODWATER, SCHOOL DISTRICT :  
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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 exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by Errol Goodwater (respondent) and the Board of Education (Board), and the respondent’s reply to the Board’s exceptions.

This case involves tenure charges brought by the Board against the respondent Errol Goodwater, a special education teacher in the Camden City School District. The Board charged the respondent with unbecoming conduct and other related charges based on one incident during which the respondent struck R.R., a 13-year-old special education student, with a computer cord. The Board also withheld the respondent’s increment based on the incident. The Administrative Law Judge (“ALJ”) found that the respondent was guilty of unbecoming conduct, and recommended that the respondent receive a four-year suspension without pay – which he has already served – along with the loss of his increments.

In his exceptions, the respondent initially points out that it is not clear from the Initial Decision whether the recommended suspension without pay was intended to result in a forfeiture of pay for those periods during which he was suspended with pay. The respondent takes exception to the ALJ's recommendation of any penalty in this case, and especially takes exception to a penalty that would result in the forfeiture of pay during the period which he was suspended with pay. The respondent also takes exception to the ALJ's determination that his behavior constituted unbecoming conduct. The respondent contends that his conduct was justified because the student had his hands raised and was about to attack the respondent when he struck the student with the computer cord. Respondent maintains that the ALJ erroneously found that R.R. did not act aggressively toward him, and that the respondent did not act in self-defense when he struck R.R. Finally, the respondent asserts that the ALJ failed to incorporate relevant testimony from the criminal trial into his findings of facts.

In its exceptions, the Board urges the Commissioner to adopt the ALJ's determination that the respondent engaged in conduct unbecoming when he struck R.R. with the computer cord, but takes exception to the ALJ's determination that the Board did not prove the remaining charges. The Board maintains that the respondent was also guilty of unbecoming conduct and neglect of duty when he failed to take R.R. to the nurse after he observed the injury to the student's back. Further, the Board argues that it proved the charge of unbecoming conduct stemming from the respondent's use of inappropriate language towards his students. A few minutes prior to the incident, the respondent told the students to "sit down and shut up." The Board points out that the respondent did not deny using that language, and the use of such language is inappropriate and unbecoming of a middle school special education teacher. Finally, the Board contends that the ALJ erred in dismissing the charge of insubordination based on the respondent's failure to properly aid in the investigation of the incident.

The Board also takes exception to the penalty recommended by the ALJ in the Initial Decision. The Board maintains that the respondent's unbecoming conduct warrants the dismissal of respondent from his tenured teaching position. The Board argues that in addition to the fact that the respondent forcefully struck R.R. without justification, there are several aggravating factors that must be looked at to determine the appropriate penalty, including: his failure to take R.R. to the nurse; his failure to properly report the incident; the negative impact it caused R.R.; and, most notably, his failure to accept a shred of accountability for his egregious behavior. As a result, the Board maintains that the recommended penalty should be modified to provide for termination of respondent's employment with the Camden City School District.

In reply, the respondent argues that the ALJ properly dismissed the tenure charges that were based upon respondent's failure to escort R.R. to the nurse after the incident, his use of the phrase "shut up," and insubordination for failure to cooperate with the investigation. The respondent also replies to the Board's contention that the respondent should be dismissed by stressing that the ALJ properly found that the respondent's actions were not premeditated, but simply "an immediate overreaction to a perceived threat." The respondent also states that he did in fact acknowledge accountability for his actions in that he apologized and told R.R. that he did not mean to hit him with the cord. Further, the respondent notes that he has already suffered tremendously in connection with this matter. As a result, the respondent argues that the loss of his tenure is too severe of a penalty.

Upon a comprehensive review of the record in this matter, which included the transcripts of the hearing conducted at the OAL on December 6, 2011, December 19, 2011 and December 20, 2011, the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct for striking the student with a computer cord. The Commissioner finds the ALJ's 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. Unlike most cases that involve the use of force by a teacher, the

ALJ had the benefit of video evidence that showed the incident. Despite the respondent's adamant claim to the contrary, it is apparent from the video that he was not acting in self-defense when he struck the student; in fact, he swung the cord and violently hit the student – who had already passed the respondent. The respondent's use of force was certainly not necessary under *N.J.S.A. 18A:6-1(1)-(4)*<sup>1</sup>, and as such his inexcusable behavior was clearly unbecoming conduct. The Commissioner is also in accord with the ALJ's finding that the remaining charges against the respondent should be dismissed for the reasons stated in the Initial Decision.

The Commissioner is mindful that factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, any evidence as to provocation, 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 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, 321:

[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.*

Despite the fact that the respondent has been a special education teacher for approximately 12 years, the Commissioner finds that his inexcusable use of physical force in striking a student with a computer cord necessitates the termination of his employment. It is well established

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<sup>1</sup> Pursuant to *N.J.S.A. 18A:6-1*, reasonable force may only be used when “necessary: (1) to quell a disturbance, threatening physical injury to others; (2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil; (3) for the purpose of self-defense; and (4) for the protection or persons or property.

that “unfitness to remain a teacher may be demonstrated by a single incident if sufficiently flagrant.” *Fulcomer, supra*, 93 N.J. Super. at 421 (citations omitted). Although, there is no indication that the respondent’s conduct was premeditated, the video evidence demonstrates that it was cruel and vicious. See, *In re Fulcomer, supra*, 93 N.J. Super. at 421. The respondent intentionally swung the computer cord and forcibly struck R.R. – leaving him crying, with a raised welt on his back that was still noticeable the next day. The respondent’s persistent assertion that he was simply trying to defend himself is particularly troubling in light of the video evidence. Certainly, there would have had to be a significant physical provocation by a student to even remotely justify the way that the respondent acted in this case. There is simply no rational excuse for this type of behavior and it cannot be tolerated.

Further, in addition to his incredible lapse in judgment, the record shows that the respondent has not accepted responsibility for his actions but instead has attempted to put all of the blame on R.R.’s behavioral problems, and the atmosphere in which he teaches.<sup>2</sup> As the respondent points out in his exceptions, he did apologize to R.R.; however, that mere gesture does not equate to the acceptance of responsibility in light of the fact that the respondent continues to suggest that his actions were fully justified under the circumstances.<sup>3</sup> Yet, the video evidence shows that this was not an act of self-preservation, but instead was an act of aggression. The Commissioner recognizes the challenges associated with teaching students who have behavioral problems; however, that does not empower teachers to aggressively strike a student out of mere frustration or based on a general atmosphere of perceived danger. Moreover, the respondent’s own statements during the hearing

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<sup>2</sup> The respondent testified that during the period before the incident occurred, a different student was acting up and had repeatedly grabbed the respondent. (Testimony of Errol Goodwater, T3 dated December 20, 2011 at 59-61).

<sup>3</sup> Respondent appeared to suggest that in addition to R.R.’s past behavioral problems, he thought the student was dangerous because he wore a red shirt and jacket, which was the official color of one of the local gangs. (T3 at 62).

suggest that his present attitude is not conducive to effective teaching in Camden City schools.<sup>4</sup> As a result, the Commissioner finds that the respondent is unfit to discharge the duties and functions of his position as a teacher, and the Commissioner cannot be certain that the respondent will not do this again.

Therefore, the Commissioner finds and concludes that the respondent must be dismissed from his tenured position with the Camden City School District. Accordingly, the Initial Decision of the OAL, as modified with respect to the penalty, is adopted as the final decision in this matter, and respondent is hereby dismissed from his tenured employment. 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.<sup>5</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 27, 2012

Date of Mailing: April 27, 2012

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<sup>4</sup> The respondent testified that he works "in the hood," and that his students "...turn out to be murderers, attempted murderers," and many are gang members and car thieves. (T3 at 62).

<sup>5</sup> 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*)