

#263-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE HEARING :
OF STEVEN E. ROTH, JR., : COMMISSIONER OF EDUCATION
GLOUCESTER COUNTY SPECIAL : DECISION
SERVICES SCHOOL DISTRICT, :
GLOUCESTER COUNTY. :

SYNOPSIS

The petitioning school district filed charges of conduct unbecoming against respondent, a tenured special education teacher, and sought to terminate his employment. The charges arose following an incident during which respondent disparaged, confronted and intimidated one of his students, J.A., in the presence of the rest of the class. The respondent contended that he had an unblemished teaching record in petitioner's district, save for this incident – which he asserted was out of character and a manifestation of frustration and anger he was feeling on the day in question.

The ALJ found, *inter alia*, that: on October 21, 2011, the respondent clearly lost his temper with student, J.A., and in so doing, made numerous derogatory remarks to J.A. in front of the class; respondent's actions were surreptitiously recorded on a cell phone, and the resulting video is indisputable evidence of respondent's conduct during the incident; respondent's behavior on the video demonstrated a lack of discretion, judgment, and maturity in dealing with his students; respondent's intimidation and harassment of J.A. violated the Board's Policy Against Harassment, Intimidation and Bullying and clearly constituted unbecoming conduct; and the crux of the case was the nature of the penalty to be imposed for respondent's misconduct and violation of the Board's policy. The ALJ concluded that, despite respondent's totally misguided and inappropriate behavior on October 21, 2011, the appropriate sanction in this case – given respondent's successful teaching history, his honest concern for his students, and his sincere remorse regarding his lapse of judgment – is not removal of respondent's tenure, but rather the forfeiture of 120 days pay, suspension without pay for the remainder of the 2011-12 school year, withholding of salary increment for both the 2012-2012 and 2013-2014 school years, completion of anger management training at respondent's expense, and written apologies to the Board, J.A. and his parents, and to the other students present during the incident.

The Commissioner concurred with the ALJ that the respondent is guilty of unbecoming conduct, but found that – under the circumstances of the case – the penalty of termination is warranted. In so determining, the Commissioner found that application of the standards set forth in *In re Fulcomer*, 93 N.J. Super. 404, 421-22 (App. Div. 1967) leads to the conclusion that the egregious nature of respondent's conduct and its effects on the students and the administration of petitioner's district overshadows the regret that respondent may feel regarding the incident. Accordingly, the Commissioner upheld the tenure charges and dismissed the respondent from his tenured position.

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.

June 25, 2012

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GLOUCESTER COUNTY SPECIAL : DECISION
SERVICES SCHOOL DISTRICT, :
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Before the Commissioner are tenure charges – certified by the Board of Education of the Gloucester County Special Services School District (petitioner) – against its employee, respondent Steven Roth, a special education teacher. Petitioner has charged respondent with unbecoming conduct based upon an incident during which respondent disparaged, confronted and intimidated one of his students, J.A., in the presence of the rest of the class.

The Administrative Law Judge (ALJ) found respondent guilty of unbecoming conduct, recommending that – as a penalty – respondent receive, in addition to the 120 day suspension without pay which commenced upon certification of the tenure charges, a further suspension without pay through the end of the 2011-2012 school year. The ALJ further recommended that respondent receive no increments for the 2012-2013 and 2013-2014 school years. In addition to the financial penalties, the ALJ recommended that respondent be required to successfully complete anger management training approved by petitioner, and issue written

apologies to the subject student, his parents, the other students in the class and the petitioning Board.

Neither party contests the ALJ's finding that respondent's behavior constituted unbecoming conduct. Thus, the gravamen of the controversy is the appropriateness of the ALJ's recommended penalties. After careful review of the record – including transcripts of the two-day hearing in the Office of Administrative Law (OAL), an audio-visual recording of the incident which precipitated this controversy and other exhibits entered into the record, the Initial Decision of the OAL, petitioner's exceptions and respondent's replies thereto, the Commissioner has determined to grant the relief sought by petitioner – termination of respondent's employment.

Factors which have previously been taken into account in making penalty determinations include 1) the nature and gravity of the offenses under all the circumstances involved; 2) the teacher's attitude – *i.e.* whether the acts were premeditated, cruel, or done with intent to punish; 3) any evidence as to provocation, extenuation or aggravation; 4) any harm or injurious effect which the teacher's conduct may have had on the maintenance of discipline and the proper administration of the school system, and 5) the likelihood of such behavior recurring. *See, e.g., In re Fulcomer*, 93 N.J. Super. 404, 421-22 (App. Div. 1967). Any penalty analysis must also take into account the recognized principles that 1) by virtue of the unique position they occupy, educators must be held to an enhanced standard of behavior, *In re Sammons*, 1972 S.L.D. 302, 321, and 2) unfitness to remain as a teacher may be demonstrated by a **single incident** if it is sufficiently flagrant, *In re Fulcomer, supra*, at 421.

The obvious mitigating factor in the present case is that before the incident which triggered this matter, respondent had taught in the district for five years without receiving formal discipline. Also, the record contains no indication that the October 21, 2011 incident was

premeditated. As to provocation, there was testimony from respondent's classroom aide that prior to respondent's inappropriate conduct, J.A. had been "badgering" respondent. Finally – and this issue was greatly emphasized by the ALJ – respondent acknowledged that he did not handle the situation properly and expressed remorse.¹

But, in the Commissioner's view, the mitigating factors do not outweigh the gravity of respondent's conduct on October 21, 2011. Careful review of the recording of the incident (Petitioner's Exhibit P-1) shows the sustained use of demeaning language – including profanity, aggressive body language, intimidation and threats, taunting, and tirades about issues unrelated to those that are properly addressed in a classroom. The conduct cannot be characterized as a spontaneous slip, as it continued over a long period of time and was recommenced several times over the course of the class period. Any "badgering" behavior that J.A. may have presented prior to respondent's misconduct pales in comparison to what was evident on P-1.

Further, the Commissioner finds the behavior particularly troubling insofar as respondent was modeling – to J.A. and the other adolescents in the class, all of whom are special education students and some of whom have behavioral problems – that threats, intimidation and disparagement are appropriate responses to frustration. As referenced above, "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 Township of Cherry Hill*, 1980 S.L.D. 987, 1003. Respondent's conduct constituted the kind of negative reinforcement that can thwart any progress made by petitioner's teaching staff in

¹ The ALJ's assessment of respondent was that he has been a dedicated special education teacher who wants his students to succeed in the real world – where challenges go beyond what is faced in school – who wants his students to understand the need to work hard, and who did not intend to hurt J.A. (Initial Decision at 26-27)

helping students overcome their behavior difficulties. Thus, it impacted the proper administration of the school district, and the confidence of the community in same.

Respondent's explanation, i.e., that he was trying to communicate a message about the real world, is not helpful. The Commissioner is surprised that a mature teacher – particularly a special education teacher – would believe, let alone suggest, that the choice of words and demeanor manifest on the October 21, 2011 recording (Petitioner's Exhibit P-1) could be an acceptable or effective way of conveying advice or insights to students. It is one thing to be blunt, and quite another to publicly insult and intimidate. Further, any message that respondent claims to have intended to convey about the real world and the traits that are needed to make a living therein could only have been completely obscured both by the nature of his behavior – which was the opposite of what can be expected to elicit success in “the real world ” – and by his rants on such tangential matters as whether J.A. should be called “special,” whether respondent could prevail over J.A. in a fight, and whether J.A. would eventually return to his original district school.

Finally, respondent's lack of judgment and control on October 21, 2011 was prolonged and acute, shedding some doubt on respondent's representation that the behavior had never happened before and/or was completely foreign to the way he normally comported himself.² The Commissioner hopes that respondent's review of P-1 and his experience of the instant proceedings will impress upon him the need to refrain in the future from the conduct manifest on October 21, 2011. Nonetheless, the charges in this matter are serious, in that they seek to discipline a teacher who publicly treated a student with contempt. The penalty recommended by the ALJ must be modified to reflect the fact that the use of intimidation,

² Indeed, J.A. maintained that the reason he took the video was because of respondent's prior behavior towards him.

ridicule and disparagement has no place in the school environment. This is especially so in light of the heightened standards of conduct to which educators are held.

The Commissioner acknowledges the ALJ's reminder, on page 29 of the Initial Decision, that "it is a staple of appellate review standards that a trial judge's assessment of credibility of a witness is to be afforded great deference" In the present case, however, credibility does not play a major role. Because the October 21, 2011 incident was recorded, the only material fact in dispute is the sincerity of respondent's contention that he understands why his conduct was indefensible and regrets it.

The ALJ concluded from respondent's demeanor that respondent's admissions of conduct unbecoming and his apologies were sincere. He was impressed with the grace with which respondent testified and apologized, in front of TV cameras, and noted that respondent became emotional only when one of his older students – whom respondent had helped – testified, out of camera range, on his behalf.

The Commissioner cannot know if the above-described demeanor truly connoted an appreciation by respondent of the destructiveness of his behavior and the effects of his conduct upon J.A., the other class members, their parents and the school district. However, even accepting the ALJ's credibility finding on this point, application of the standards set forth in *Fulcomer et al.* leads to the conclusion, in the Commissioner's view, that the egregiousness of respondent's conduct and its effects on the students and the administration of petitioner's district overshadows the regret that respondent may feel.³

³ Petitioner's exceptions and respondent's replies thereto are not separately addressed herein, as the issues raised therein have been discussed *supra*.

Accordingly, the finding in the Initial Decision of unbecoming conduct is adopted, but the penalty is modified. Petitioner's request that respondent's employment be terminated is granted.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 25, 2012

Date of Mailing: June 26, 2012

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*)