

#408-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF KEVIN HARRIMAN, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE :
BOROUGH OF ELMWOOD PARK, : DECISION
BERGEN COUNTY. :

SYNOPSIS

The petitioning school district certified tenure charges of unbecoming conduct, insubordination and other just cause against respondent – a tenured physical education teacher – alleging, *inter alia*: deceptive and untruthful conduct; inappropriate, defiant and insubordinate conduct; failure to follow administrative directives; failure to enroll in anger management classes; and disregard of corrective plans. The charges related to several specific incidents as well as ongoing issues involving respondent’s consistently negative interactions with his supervising administrators. The petitioning Board contended that respondent’s misconduct warrants dismissal from his tenured position.

The ALJ found, *inter alia*, that: respondent’s testimony regarding the Board’s claim that he made a false representation in a memo to the wrestling coach lacked credibility; respondent was combative and argumentative with representatives of the New Jersey State Interscholastic Athletic Association (NJSIAA) and this unprofessional, inappropriate behavior left the school district vulnerable to sanctions from the NJSIAA – though none were assessed; respondent’s testimony and written statements in the record indicate that he did not think that he should have to adhere to the directives of, or answer to, school administrators who were younger than himself; his testimony and writings indicate that respondent considered the administrators to whom he reported to be incompetent, meddling micro-managers who were unworthy of his respect; respondent believed that the tenure charges arose totally out of a conspiracy against him and not out of any behavior on his part; respondent considered the multiple write-ups of his behavior during a short period of time to be the result of a campaign by administrators to ruin him rather than a reflection of his own behavior; a school system cannot operate if the staff and administrators are constantly at odds; and, in the instant case, the disagreements reached mammoth proportions and compelled administrators to spend inordinate amounts of time responding to respondent’s many voluminous “rebuttal” memoranda. The ALJ concluded that the petitioning Board sustained its burden of proving that respondent was guilty of conduct unbecoming, and that the appropriate penalty is termination of tenure.

Upon careful and independent review of the Initial Decision and the record – in particular, exhibits containing respondent’s memoranda – the Commissioner concluded that the charges were substantiated. The Commissioner concurred with the ALJ that the respondent must be terminated from employment in petitioner’s schools. A copy of the final decision will be forwarded 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.
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October 12, 2012

IN THE MATTER OF THE TENURE :
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SCHOOL DISTRICT OF THE :
BOROUGH OF ELMWOOD PARK, : DECISION
BERGEN COUNTY. :

Before the Commissioner are certified tenure charges alleging that respondent has demonstrated conduct which is unbecoming a teaching staff member, including deception, insubordination and incivility. Upon consideration of the Initial Decision of the Office of Administrative Law (OAL) and the record – which includes hearing transcripts and numerous exhibits¹ – the Commissioner concludes that the charges are substantiated.

In Charge One, pertaining to deceptive conduct, the Administrative Law Judge (ALJ) found two “counts” to be proven. One referred to an incident in which respondent forwarded to the petitioner’s athletic director a negative addendum to the 2003 evaluation of an assistant wrestling coach, and allegedly falsely stated to the athletic director that the high school principal had recommended that he do so. In another, the principal of one of the schools in which respondent taught directly observed that he had left his class unattended, but respondent denied same when the principal spoke to him about it. The Commissioner concurs with the ALJ that the record supports the foregoing allegations and also finds that an incident referenced in Charge Three constituted dishonesty. In that incident, respondent was seen injecting himself with insulin in a cafeteria filled with children – contrary to prior direction – but when confronted about his actions, falsely contended that he was injecting an emergency dose of glucose.

¹ Neither party filed exceptions to the Initial Decision.

Charge Two, concerning insubordinate behavior, includes fourteen counts – twelve of which the ALJ found to be substantiated. Some of those twelve counts relate to incidents that occurred in or about the 2005-2006 school year when respondent was a wrestling coach. Respondent was, for example, said to have defied his supervisor when he selected as most valuable player a student who had been suspended for spewing profanity at a teacher. In another incident, respondent was reported to have been argumentative and unprofessional in telephone calls with New Jersey State Interscholastic Athletic Association (NJSIAA) personnel regarding the NJSIAA's seeding or ranking of petitioner's wrestling team – jeopardizing petitioner's standing in the NJSIAA. When directed to attend an NJSIAA compliance meeting, he initially refused. And in May 2006, respondent defied an administrative directive to coaches to distribute their awards at a unified high school athlete dinner. He instead distributed his awards at a municipal recreation department dinner for wrestlers, creating a situation in which the high school athletes were not all recognized in a consistent manner.

The balance of the counts which the ALJ found to be substantiated pertain to incidents in 2011 in which respondent openly defied instructions or directives given by his supervisors. For example, in June 2011 respondent was said to have failed to comply with two administrative directives by principal Allison Jackter to schedule a meeting with her, instead advising her in a memorandum that he would communicate with her via whiteboard only. (Petitioner's Exhibit P-12 at 5)

Especially serious was respondent's reaction, in September 2011, to District Superintendent Richard Tomko's placement of him on a 90-day action plan requiring, *inter alia*, that respondent 1) refrain from making insubordinate comments; 2) refrain from discussing with colleagues his dealings with the administration; 3) refrain from discussing with students his

issues with the administration or staff; and 4) attend an anger management professional development course to be funded by the district. (Petitioner's Exhibit P-18 at 3) Before the 90-day improvement plan had run its course, respondent sent an email to Tomko stating that he would henceforth never meet alone with him, or with Principal Jackter or Principal David Saper. (Petitioner's Exhibit P-23)

In a second memorandum respondent advised Tomko that he viewed the 90-day action plan as invalid. Denying responsibility for any insubordinate statements or actions, and alleging that Tomko was colluding with other administrators to trump-up charges against him, respondent advised that he would not accept monitoring from Tomko, Saper or Jackter – referring to the latter two as “coworkers” – and would not attend an anger management program. (Petitioner's Exhibit P-25 at 3-4) This memorandum was copied, *inter alia*, to all members of the respondent board of education. (*Id.* at 5) On the same date, respondent sent a memorandum only to board members claiming that Tomko's write-ups about him were fabrications and threatening legal action for harassment. (Petitioner's Exhibit P-24)

The Commissioner concurs with the ALJ that the allegations discussed above are substantiated by the record, and also finds that respondent's previously mentioned injection of himself with insulin in the cafeteria – after being directed to refrain from doing so – falls under the rubric of insubordination.

As to Charge Three, the ALJ found eleven of the fourteen counts – which describe displays of hostility, contempt, and/or verbal abuse by respondent toward supervisors and colleagues who did not endorse his views and/or behavior – to be proven. The eleven counts include an incident in which respondent was said to have ignored Jackter when she directly asked him to meet with her, and other incidents where respondent was belligerent toward

principals Jackter or Saper during meetings. The counts also include respondent's harassment of a security guard when he learned that the guard had reported to his superiors the gist of a rant against Saper that respondent had made in a personal telephone call to the guard.

But most significant are the counts which make reference to respondent's "rebuttals" to the written directives of his supervisors. In multiple situations, the attempts of respondent's supervisors to meet with him to discuss problems were unsuccessful. Notwithstanding the fact that in many cases the supervisors were calling meetings with respondent simply to get a full picture of how a particular event unfolded, respondent would regard questions about his actions as hounding, and would typically leave such meetings prematurely. Hence the follow-up memoranda stating in writing what the supervisors had wished to communicate in person – and respondent's rebuttals.

Respondent's rebuttal memoranda were defensive, accusatory, demeaning, and often threatened legal action. They would typically begin with versions of the subject events that respondent would describe as the truth, and characterizations of the supervisors' observations as falsehoods. In each rebuttal, respondent belittled his supervisor and depicted himself as superior. In each rebuttal, respondent attributed to his supervisor intentions and motives as to which respondent could not possibly have had any insight. Finally, each memorandum ended with respondent's rejection of his supervisor's directives and a warning that further "harassment" would not be tolerated. (*See, e.g.*, Petitioner's Exhibits P-9, P-12, P-17 and P-36)

More than any witness testimony, respondent's rebuttal memoranda provide insight into the reasons not just for Charge 3, but for all of petitioner's charges. The memoranda demonstrate respondent's undisguised disdain for his supervisors, his failure to appreciate their

responsibilities and authority, his defiance of their directives and his failure to understand his obligation to cooperate with them for the smooth operation of the school.

Accordingly, the Commissioner adopts the ALJ's recommendation² that petitioner's Charges One, Two, Three and Four (which alleges a pattern of the behavior described in the first three charges) be upheld, and that respondent must be terminated from employment in petitioner's schools. Further, the State Board of Examiners will be provided with a copy of this decision for action as it deems appropriate.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: October 12, 2012

Date of Mailing: October 15, 2012

² The ALJ's recommendations were based, in part, upon credibility determinations which complement the critical documentary evidence. Pursuant to *N.J.S.A. 52:14B-10(c)*, an ALJ's credibility determinations are entitled to deference and may not be modified unless the findings are arbitrary, capricious or unreasonable, or are not supported by the record.

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.