

IN THE MATTER OF THE TENURE :
HEARING OF PAULA WECKESSER, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : AMENDED DECISION
TOWNSHIP OF WOODBRIDGE, :
MIDDLESEX COUNTY. :

SYNOPSIS

The Board certified tenure charges of insubordination and conduct unbecoming against Paula Weckesser, a tenured math teacher employed by the school district. The Board contended, *inter alia*, that respondent: conducted herself in an inappropriate and disrespectful manner over a prolonged period of time; interacted with colleagues, supervisors, and students in a manner unbecoming a professional; and continually engaged in a pattern of misconduct over the course of several years. The charges alleged that respondent: failed to adhere to District procedures and directives regarding her grade book and testing protocols; engaged in inappropriate dialogue with students on Facebook; acted in a defiant and rude manner with her supervisors; was chronically tardy; failed to locate or report a missing student; and repeatedly attributed her deficiencies in the classroom to her students. The petitioning Board sought removal of respondent from her tenured position.

The ALJ found, *inter alia*, that: respondent failed on numerous occasions to properly maintain grade books as required by District policy, and repeatedly refused to follow her supervisors' instructions regarding timely entering of grades; respondent continued a pattern of tardiness despite notifications from her supervisor that such behavior was not acceptable; respondent failed to adhere to an administrative directive that prohibited cell phones in testing rooms during the HSPA; respondent's communications with students – including calling one “a loser like you” on Facebook, and making sarcastic comments in the classroom – were highly inappropriate for an educator; respondent's challenges to the integrity and honesty of her superiors is likewise inappropriate; and respondent is defensive and places the blame for her poor performance on anyone but herself, including her students. The ALJ concluded that respondent's long history of unacceptable behavior constitutes unbecoming conduct and insubordination, and the number and nature of the instances of her conduct are such that the proper penalty in this case is termination of tenure. Accordingly, the ALJ ordered the tenure charges sustained, and the respondent's tenure terminated.

Upon full consideration and review – and finding the respondent's exceptions unpersuasive – the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the respondent was dismissed from her tenured position and a copy of this decision was forwarded to the State Board of Examiners for action as that body may deem 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>

September 16, 2013

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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 the respondent and the Board of Education's (Board) reply thereto.¹

This case involves tenure charges brought by the Board of Education (Board) against the respondent, Paula Weckesser, a tenured teacher in the Woodbridge Township School District. The Board charged the respondent with several counts of insubordination and unbecoming conduct based on a pattern of misconduct over a period of time, including: lack of professionalism; acting in a defiant, rude and accusatory manner with superiors; failure to comply with district procedures and administrative directives; chronic tardiness; inappropriate dialogue with students on a social media website; and failure to locate or report a missing student. The Administrative Law Judge (ALJ) found that the respondent was guilty of

¹Although the respondent originally filed timely exceptions and the Board filed a timely reply with the Department of Education, the papers were not properly logged by the Office of Controversies and Disputes and as such they were not considered in the final decision issued by the Commissioner on July 29, 2013. Once the Office of Controversies and Disputes became aware of the circumstances surrounding the exceptions, the matter was re-opened and the respondent's exceptions and the Board's reply thereto were fully considered.

unbecoming conduct and insubordination, and recommended that the respondent be removed from her tenured position.

The respondent takes exception to each finding of unbecoming conduct and insubordination outlined in the Initial Decision, contending that the ALJ erroneously found that the Board's allegations warrant her dismissal from employment.² Additionally, the respondent contends that the ALJ wrongfully relied on case law that was not on point to support her findings regarding specific charges. The respondent first takes exception to the ALJ's determination that the Board properly charged the respondent with unbecoming conduct in connection with Charge 1, Count 1 and 4, and Charge IV, *i.e.* improperly keeping her grade book; untimely entering her grades; and chronic tardiness.³ The respondent maintains that those charges should have been inefficiency charges, requiring the implementation of a modified professional improvement plan prior to the filing of tenure charges – as opposed to charges of unbecoming conduct.

Further, the respondent argues that the ALJ provided no reasoning whatsoever as to why the respondent's failure to properly maintain her grade book rose to the level of unbecoming conduct, even if it could not be considered inefficiency. Additionally, the respondent argues that the improper entry of grades one time is not sufficiently flagrant in and of itself to amount to conduct unbecoming. With respect to the allegation of excessive tardiness, the respondent argues that being tardy 17 times in 11 years is not excessive; the ALJ erroneously dismissed the fact that the respondent suffers from irritable bowel syndrome; there was no

² The respondent included similar arguments in her post hearing submission that were considered by the ALJ and addressed in the Initial Decision.

³ The respondent filed a Motion to Dismiss these charges on the ground that they are really inefficiency charges. By Order dated February 19, 2013, the ALJ denied the Motion to Dismiss.

testimony suggesting that her tardiness disrupted any continuity of instruction; and the ALJ erred in finding that the respondent received warnings that her supervisors were dissatisfied with her tardiness.

The respondent also takes exception to the ALJ's determination that she was insubordinate when her cell phone rang during the HSPA testing. The respondent cites to witness testimony to argue that there was no administrative directive pertaining to teachers and cell phones, and all the prohibitions on cell phones were directed towards the students taking the test. The respondent also stresses that she did not use her cell phone during the HSPA testing but rather she turned it off without answering it the moment that it rang and removed it from the testing room. The respondent maintains that her inadvertent failure to either silence or turn off her cell phone cannot be considered insubordination, but simply a mistake.

The respondent contends that the ALJ misread the record regarding her exchange with Ana Almeida, a cafeteria worker. The respondent contends that the ALJ erroneously found that her remark to Ms. Almeida – regardless of whether she said “[w]hat the heck do you know?” or “[w]hat the f--k do you know?” – was unbecoming conduct. The respondent notes that while Ms. Almeida testified that the respondent used a profanity instead of “heck”, there was no corroboration. Further, the respondent asserts that Ms. Almeida testified that there were no kids around when the exchange took place, and yet the ALJ stated that Ms. Almeida “testified that students were present when Weckesser made the remark.” (Initial Decision, pg 63) As a result, the respondent argues that her expression of frustration regarding the fact that the cafeteria worker in charge of distributing food did not know what food was available cannot be considered unbecoming conduct.

Additionally, the respondent takes exception to the ALJ's determination that she engaged in unbecoming conduct when she responded to a student who could not read numbers off a calculator by saying "[y]ou don't know how to read the numbers off the calculator! That's good." The respondent contends that she believed the student was joking during the entire exchange, and the ALJ's conclusion that the comment was inappropriate and sarcastic indicates the ALJ's inherent bias against the respondent from the outset – which is evidenced by the tone of the Initial Decision as a whole. The respondent also argues that the ALJ erred in finding that she was insubordinate during her meeting with Ms. Wandras, the vice principal, regarding the calculator incident. The respondent asserts that the ALJ improperly relied on *In the Matter of the Tenure Hearing of Irandokht Toorzani, School District of the Borough of Elmwood Park, Bergen County*, Commissioner Decision No. 49-12, decided February 8, 2012, to support her finding that respondent was insubordinate when she told the vice principal not to "lie at her expense" after the vice principal accused the respondent of rolling her eyes during the meeting. The respondent maintains that *Toorzani, supra*, was a completely different circumstance and here there was no indication that the respondent's comment impaired the vice principal's ability to discharge her administrative duties. Therefore, the ALJ's finding of insubordination must be rejected.

The respondent asserts that the ALJ also erred in finding that she engaged in unbecoming conduct by failing to report a missing student and by making a student stand in class. The respondent argues that the ALJ appeared to have a problem with the fact that she didn't personally speak to an administrator even though she called the main office and spoke with a secretary to report the student missing. In her exceptions, the respondent cites to the Initial Decision where the ALJ stated, "after she was initially unsuccessful [in trying to locate the

student], she had a duty to continue to try to report the student.” The respondent maintains that there is no indication as to what she should have done to continue to report the student missing once she had informed the office. With respect to the student who was asked to stand, the respondent points out that the witness testimony concerning the length of time that the student was asked to stand was entirely inconsistent. The respondent testified that she asked the student to stand because he had fallen asleep in class and he needed to wake up to take a quiz, and there is no indication that the respondent forced the student to stand as a disciplinary measure.

The respondent also claims that the ALJ erred in finding that her responses to her teaching observations constitute unbecoming conduct. The respondent stresses that her responses were not disseminated to either parents or students, and that she used them to explain to the administration her feelings and concerns about the lack of interest that she observed in the classroom. Finally, the respondent argues that her comments on Facebook do not warrant her dismissal. The respondent contends that she posted one response to a student and she did not have a continuing dialogue as the Board has alleged. Moreover the respondent acknowledges that she should not have engaged in the exchange on Facebook, but notes that it was not so egregious as to warrant dismissal as was the conduct in *In the Matter of the Tenure Hearing of Walter Crump, School District of the City of Camden, Camden County, Commissioner Decision No. 22-13*, decided January 18, 2013.

In reply, the Board urges the adoption of the Initial Decision as the final decision in this matter, arguing that the respondent’s exceptions merely reiterate arguments which were previously raised before the ALJ and properly dismissed. The Board further contends that the respondent’s exceptions ignore the fact that there is ample precedent to dismiss a teacher who fails to maintain a grade book; fails to timely submit grades; posts grades during instructional

time; fails to adhere to a policy regarding cell-phone use during the HSPA; engages in inappropriate conversations with students on Facebook; is rude to a cafeteria worker; is rude to a supervisor; fails to report that a child left her classroom; blames her students for her deficiencies; and directs a child to stand as punishment. In addition, the Board provided a specific response to each exception submitted by the respondent.

With respect to the respondent's assertion that certain charges brought by the Board should have been inefficiency charges as opposed to unbecoming conduct, the Board contends that the ALJ properly applied the relevant case law and convincingly explained in the February 19, 2013 Order that the charges constituted examples of unbecoming conduct. Moreover, the ALJ's finding that the respondent's failure to properly keep her grade book; her untimely entering of grades; and her chronic tardiness amounted to unbecoming conduct was fully supported by the record. The Board also points out that the ALJ properly noted in the February 19, 2013 Order that the tenure charges are predicated on numerous incidents over the course of many years, and respondent's attempt to isolate each count, standing alone, is not supported by the case law.

In reply to the respondent's claim that there was no policy against teachers having cell phones during the HSPA test, the Board argues that it produced a handbook on the HSPA testing that displayed a picture of a cell phone with a line drawn through it. The Board also notes that the respondent admitted that her cell phone went off during the test. Additionally, the Board maintains that the ALJ properly found that the respondent's comment to Ms. Almeida, the cafeteria worker was rude and disrespectful and constitutes unbecoming conduct whether she used "heck" or "f—k."

In reply to the respondent's exceptions regarding the calculator incident, the Board maintains that the ALJ properly cited case law for the proposition that a teacher's derogatory comments to students, even if a teacher is joking, can constitute unbecoming conduct. The Board stresses that the respondent admits she made the comment. In addition, the Board emphasizes that the ALJ further found that because she made this remark during an observation – and continues to maintain the remark was appropriate – the respondent demonstrated, “a stubborn persistence in [her] own erroneous belief that this kind of joking around created a positive atmosphere” and “underscore[s] the need to remove [her] from the school environment.” (Initial Decision, pg. 63)

The Board also argues that the ALJ properly found that the respondent was insubordinate during her meeting with Vice Principal Wandras regarding the calculator incident when the respondent admittedly told Ms. Wandras not to “lie at my expense” after Ms. Wandras accused her of rolling her eyes. The Board also maintains that the ALJ properly determined that the respondent's responses to her teaching observations constitutes unbecoming conduct, stressing that the respondent continuously blamed her students for their poor performance, refused to take any responsibility for her actions and resisted any attempts to modify her behavior. Finally, the Board contends that the respondent admitted to posting the following in response to student posts on Facebook: “LOSER!!!” “[t]hey have no reason to fire me over a loser like you. WOW.”, and “See! Again! You ASSume.” The Board maintains that such behavior, when joined with all the other incidents, should not be condoned and warrants her dismissal.

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the hearing conducted at the OAL, the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct and insubordination.

Conduct unbecoming a public employee includes a broad range of behavior which adversely affects the morale or efficiency of the public entity or can destroy public respect for public employees and confidence in the operation of public services. *See, e.g. In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960). Insubordination has been defined as the willful and intentional disregard of the lawful and reasonable directives of an employee's duly authorized supervisor. *In the Matter of the Tenure Hearing of Charles Motley, State-Operated School District of Newark, Essex County*, Commissioner Decision No. 252-99 (August 4, 1999), at 2-3, *adopted* State Board (Dec. 1, 1999).

Notwithstanding the respondent's contentions to the contrary, the Commissioner 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 insubordinate and unbecoming conduct – to be fully supported by the record and consistent with applicable law.⁴ The Commissioner also finds no basis in the record to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the witnesses who appeared before her and made findings of fact based upon their testimony. It is well established that the Commissioner must defer to the credibility findings of the ALJ unless these prove to be 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 respondent's exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by her in weighing the testimony and evidence, and in concluding that the record overall supported the Board's charges. In her exceptions, respondent generally argues that each

⁴ The Commissioner is also in accord with the ALJ's determination that the respondent's use of a student's test to write a pass, and the two phone calls with Vice Principal Wandras did not rise to the level of insubordination.

allegation brought by the Board does not amount to unbecoming conduct or insubordination, but respondent fails to recognize that the Board proved several instances of inappropriate conduct and unprofessional behavior that – taken as a whole – demonstrate she is unable to act in a manner that is conducive to a positive school environment. Additionally, with respect to the respondent’s argument that certain charges were actually inefficiency charges requiring a 90-day improvement plan, the Commissioner agrees with the ALJ – for the reasons outlined in the ALJ’s February 19, 2013 Order – that the Board was not required to charge the respondent with inefficiency in connection with Charges 1, Count 1 and 4, and Charge IV.⁵ Moreover, even if some of the allegations relating to the respondent’s performance of her duties could be characterized as inefficiency, respondent’s unbecoming conduct in this case was established by a pattern of behavior that impaired her ability to discharge the duties and functions expected of a teaching staff member. *See, In the Matter of the Tenure Hearing of Jill Kubicki, School District of the Township of Lawrence, Mercer County, Commissioner Decision No. 192-11, decided May 23, 2011.*

Turning to the appropriate penalty in this matter, the Commissioner recognizes that the 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 Kittell, Little Silver School District, 1972 S.L.D. 535, 541; In re Fulcomer, 93 N.J. Super. 404, 422 (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*

⁵ In the February 19, 2013 Order, the ALJ provided a thorough analysis of the relevant case law in connection with the dynamic between charges grounded in inefficiency as opposed to unbecoming conduct charges.

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.*

The Commissioner recognizes that the charges in this matter are serious in nature and finds that the inappropriate behavior of respondent necessitates the termination of her employment. In this case, respondent's unbecoming conduct and insubordination was not the result of an isolated incident, but rather a pattern of conduct that continued throughout several school years.⁶ The record also demonstrates that respondent has been unwilling or unable to improve her inappropriate behavior for the betterment of the school environment. Notably, the respondent did not deny that she posted the inappropriate comments on Facebook; made the comment to the student regarding his inability to read the calculator; forced a student to stand during class; or that her cell phone went off during HSPA testing, but rather she simply provided dubious excuses for her conduct. In light of this failure to accept responsibility for any of the problems described herein, it cannot be reasonably anticipated that respondent will significantly change her attitude or style. Further, the fact that the respondent: blamed her students when she was critiqued; posted hostile comments towards students on Facebook; had outbursts towards the administration; and expressed unnecessary frustration with a cafeteria worker – all demonstrate that she does not have the requisite degree of self-restraint or controlled behavior to effectively teach students. As a result, the Commissioner finds that the respondent is unfit to discharge the duties and functions of her position as a teacher.

⁶ The details and history of respondent's conduct are extensively outlined in the Initial Decision and need not be repeated here.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from her tenured position with the Woodbridge Township School District. 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.⁷

COMMISSIONER OF EDUCATION

Date of Decision: September 16, 2013

Date of Mailing: September 17, 2013

⁷ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.