

IN THE MATTER OF THE TENURE :  
HEARING OF CHARLES MOTLEY, :  
STATE-OPERATED SCHOOL : COMMISSIONER OF EDUCATION  
DISTRICT OF THE CITY OF NEWARK, : DECISION  
ESSEX COUNTY. :  
\_\_\_\_\_ :

SYNOPSIS

District certified tenure charges against respondent teacher for unbecoming conduct and insubordination/neglect of duty.

The ALJ found that the District sustained its tenure charges of unbecoming conduct and neglect of duty and concluded that the appropriate penalty was a permanent reduction in compensation of one step on the salary guide and forfeiture of 120 days' salary already withheld.

The Commissioner affirmed the findings and conclusions of the ALJ but, in light of respondent's unprofessional, uncooperative and defiant conduct, modified the penalty to include, in addition to the permanent reduction of one step on the salary guide and the 120 days' salary already withheld, an additional forfeiture of two months' salary and concomitant emoluments.

AUGUST 4, 1999

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Both respondent's and the District's exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in deciding the within matter.

Having conducted his own careful review of the entire record in this matter, including transcripts from the eight days of hearing at the OAL, all exhibits brought to the record, as well as each of the exceptions advanced by the parties, the Commissioner determines to affirm the findings and conclusions of the Administrative Law Judge (ALJ), with modification as set forth herein. In so doing, the Commissioner notes that these findings and conclusions are well grounded in the record before him, and such record provides the Commissioner with no cause to disturb the weight ascribed to evidence or the credibility assessments made by the ALJ.

Initially, the Commissioner determines that the testimonial and documentary record amply supports the ALJ's finding that the District has proven by a preponderance of credible evidence that respondent is guilty of unbecoming conduct by virtue of his: (1) belittling

Ms. Levin, a new teacher, in front of her students;<sup>1</sup> (2) refusing, on November 6, 1996, to teach students in Mr. Cooper's classroom;<sup>2</sup> (3) raising his voice to an unacceptable level when addressing a colleague, Ms. Kee Chee; and (4) using the pejorative phrase "problem children" to refer to students in Ms. Holiday's class.<sup>3</sup> Additionally, although not identified as a specific finding by the ALJ, yet nevertheless listed by the District as one of its charges (Statement of Charges at p. 3), the Commissioner finds that the record supports the conclusion that the poor interpersonal skills displayed by respondent in working with other staff members was a significant reason, if not the sole basis, for Principal Arthur Hooper's recommendation that he be transferred from the Alexander Street School to another school. (Exhibit P-19)

Further, the Commissioner concurs that the District has proven that respondent is guilty of neglect of duty and insubordination for, *inter alia*, the reasons set forth in the initial decision at pp. 13-15.<sup>4</sup> Here, the Commissioner concurs with the District's view that insubordinate behavior need not necessarily manifest itself in an "overt exhibition of disrespect or verbal refusal to perform duties required of his position," *In the Matter of the Tenure Hearing of Peter Loria, State-Operated School District of the City of Newark, Essex County*, January 26, 1998 slip. op. at p. 69, *aff'd* State Board August 7, 1998, but, rather, may be found

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<sup>1</sup> Although respondent objects to the ALJ's characterization of Ms. Joyce Thompson as a "Title I teacher," rather than "a staff developer assigned to teachers having problems" (Respondent's Exceptions at p. 5), the distinction, to the extent one actually exists, is not necessarily significant. Even if Ms. Thompson's role was, as respondent urges, designed to be supportive of teachers rather than students, thereby explaining her harmonious working relationship with Ms. Levin, the Commissioner finds that, in view of the total record, respondent cannot credibly rely on this role differentiation to in any way justify his unbecoming conduct.

<sup>2</sup> The ALJ appropriately captions this behavior, "Blaming Another Teacher for His Own Inadequacies." (Initial Decision at p. 9)

<sup>3</sup> Here, respondent finds it relevant that there is no evidence that he was yelling at the time, or that any children overheard his exchange with Ms. Holiday. (Respondent's Exceptions at p. 21) However, it is not relevant. As the ALJ noted, given respondent's experience as a teacher, it is indefensible that he would use such language in front of the students, and then attempt to characterize the exchange as a professional collaboration. (Respondent's Exceptions at p. 21, asking, "Isn't it reasonable that peers, having to work collaboratesly (sic), would discuss such subjects professionally in class?")

<sup>4</sup> The District identifies its second charge as "Insubordination/Neglect of Duty" (Statement of Charges at p. 2) and objects to the ALJ's notation on page 2 of the initial decision that the "[c]harges relating to failure to teach are best handled under the general category of neglect of duty" rather than insubordination. (District's Exceptions at p. 4) In either event, the ALJ properly states that these charges constituted "other just cause." (Initial Decision at p. 16)

by an employee's "willful and intentional disregard of the lawful and reasonable directives of [an employee's] duly authorized supervisor \*\*\*." (*Id.*) In the instant matter, the Commissioner notes that, even after the letter of reprimand issued to respondent following the February 8, 1996 incident in Ms. Guddy's class (Exhibit R-16), respondent continued to exhibit inappropriate conduct toward his colleagues (*see* findings of unbecoming conduct, *supra*), thereby intentionally disregarding the District's reasonable expectation that he should *work in partnership* with the classroom teachers in order to effectuate the goals of the Title I program. (Transcript of September 28, 1998 at p. 87) Moreover, the Commissioner finds respondent's own writing to Ms. Johnson-Green, Principal of the 13<sup>th</sup> Avenue School, to be fairly illustrative of his attitude at the time these events occurred, and, also, consistent with his demeanor at the within hearing. Specifically, following Ms. Johnson-Green's November 20, 1996 classroom observation of Mr. Motley in which she notes he "sat in the rear of the room the entire period with no interaction with the students," and that it was his "responsibility to 'work' with the students \*\*\*\*" (Exhibit P-5), Mr. Motley responded, in pertinent part:

As you can well observe I was not just sitting for the period. My presence indicates to the classroom teacher and to the students that I come to assist in any way I can. Previous lessons had classroom teacher's mentor, students, and myself engaged in the lesson when classroom teacher deemed necessary.

I regret that you were unaware of Room 407's procedures, however I hope this clears your understanding of the matter.

I have worked with teachers and students in Grades 4, 7 and 8 \*\*\* covering subject matter of Reading, Writing, Mathematics, Social Studies, and Science. So when you refer that it's my responsibility to work with students, I hope you would observe a little more carefully before you jump to irrational conclusions after only observing one period in one class. (Exhibit R-13)

Respondent's memorandum to his principal goes beyond that which may be considered a professional rebuttal or justification of his pedagogical techniques, being both disrespectful and

insolent. It is also noteworthy that Ms. Johnson-Greene testified that, upon meeting with respondent to discuss the problems he was having with the classroom teachers, respondent yelled at her, until it became necessary for her to end the conversation. (Transcript of September 25, 1998 at pp. 40-41)

Finally, although the Commissioner agrees that the circumstances herein do not warrant dismissal of respondent from his tenured position for the reasons set forth in the initial decision,<sup>5</sup> he recognizes that, under certain circumstances, it is necessary to impress upon a respondent the seriousness of his actions. *Cf. In the Matter of the Tenure Hearing of William Morales, Board of Education of the City of Trenton, Mercer County*, decided by the Commissioner July 7, 1997, wherein the Commissioner, in order to impress upon respondent the seriousness of the charges proven, increased respondent's penalty from loss of 120 days' salary and two increments to include a six-month loss of salary, notwithstanding that the Board did not prove all of its charges; *In the Matter of the Tenure Hearing of DiPillo, School District of the Township of Randolph, Morris County*, 95 N.J.A.R.2d (EDU) 206, 208, wherein the State Board of Education increased the penalty assigned by the Commissioner to respondent, noting the need to impress upon respondent the seriousness of her actions. In the instant matter, finding that respondent's conduct was both repeated and unrepentant, and noting that such unprofessional and defiant conduct cannot be tolerated, the Commissioner herein orders that respondent shall suffer a permanent reduction of one step on the salary guide, and shall forfeit the 120 days' salary already withheld, together with an additional two months' salary and concomitant emoluments. In so determining, the Commissioner also notes that, although he is without the authority to compel respondent to attend training classes as noted by the ALJ (Initial Decision at

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<sup>5</sup> It is herein noteworthy that the District acknowledges that *either* removal or an eight-month suspension without pay is an appropriate penalty in this matter. (District's Exceptions at p. 2)

p. 18), the District may elect to do so, within the confines of respondent's tenure and contractual rights.

Accordingly, the initial decision of the ALJ is affirmed, with modification, as set forth above.

IT IS SO ORDERED.<sup>6</sup>

COMMISSIONER OF EDUCATION

AUGUST 4, 1999

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<sup>6</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.