

#134-13

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Pursuant to Referral By the Commissioner of Education
State of New Jersey
Before Timothy J. Brown, Esquire

In the matter of:

The Tenure Hearing of Sarah Hancock

School District of The City of Bridgeton

Cumberland County

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: Agency Docket No. 7-1/13
:
:

Decision and Award

Appearances:

**On behalf of the School District of
The City of Bridgeton, Cumberland County:**

A. Paul Kienzle, Jr., Esquire
Bridgeton Public Schools
Bank Administration Building
P.O. Box 657
Bridgeton, NJ 08302

On behalf of Sarah Hancock:

Ned P. Rogovoy, Esquire
Madison Square Complex
782 S. Brewster Road, Unit 6A
Vineland, NJ 08361

Introduction

This matter arises from tenure charges of conduct unbecoming a staff member against Sarah Hancock, (Respondent) by the School District of The City of Bridgeton, Cumberland, County (the District) and a February 1, 2013 referral of the tenure charges to the undersigned by the New Jersey Department of Education, Bureau of Controversies and Disputes pursuant to N.J.S.A. 18A:6-16 as amended by *P.L. 2112, c. 26*.

The hearing in this matter opened on March 5, 2013 in Bridgeton, New Jersey and continued thereafter telephonically on March 28, 2013. All parties were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Respondent Sarah Hancock was present for the first day of hearing and testified on her own behalf. At the close of the hearing on March 28, 2013, the parties waived closing argument and the dispute was deemed submitted.

This Award is made following my careful consideration of the entire record in the matter.

Issues

This matter presents the following issues:

- (1) Has the District met its burden of establishing the truth of its conduct unbecoming tenure charges against Respondent?
- (2) If so, do the proven charges warrant dismissal or reduction in salary?

The Tenure Charge

On December 7, 2012 the District's superintendent of schools certified charges against Respondent of conduct unbecoming a staff member:

...including assaulting a student, pinning the student against hall lockers, making inappropriate comments and threats to a student,

making inappropriate comments concerning the students' status and conduct in the class in the presence of others, and other just cause...:

- Charge No. 1: Conduct unbecoming a staff members.
- Charge No. 2: Assaulting student in her care and supervision.
- Charge No. 3: Pinning the student against hall lockers.
- Charge No. 4: Making inappropriate comments and threats to a student.
- Charge No. 5: Making inappropriate comments concerning the student's status and conduct in the class in the presence of others.

Facts

Respondent holds certifications in Special and Elementary Education (K -8). She has taught in the District for approximately twenty-two years and has no discipline or performance issues on her record. Prior to the 2012-2013 school year Respondent taught at the Broad Street School. For the 2012-13 school year Respondent was assigned to the Cherry Street School where she and a Classroom Aid were assigned a class of 15, grade 5 and 6 special education students.

On November 5, 2012¹ one of Respondent's students, a sixth grader with a learning disability referred to herein as Irene, reported to school counselor Melissa Tunis that she had been punched in the chest by Respondent while in the hallway and that a neighboring teacher to Respondent's classroom, fifth grade teacher Meghan Choyce, had told Irene to see Tunis.

The Meeting in the Office of Counselor Tunis

According to School Counselor Tunis, Irene arrived at her office at approximately 11:30 a.m. and began to speak with the counselor about the hallway incident with Respondent. At some point, Tunis testified, Respondent came into her office "appearing

¹ All dates are 2012 unless otherwise indicated.

irate” and continued to “scream” at Irene that Respondent is allowed to push Irene and poke her in the chest whenever she feels that Irene is threatening the safety of her students. While Respondent was screaming, Tunis described, Respondent was acting out the motions of pushing and poking, directing her demonstration toward a wall in Tunis’s office. Thereafter Respondent continued by saying that Irene “is the worst student in the class and considered the bad student.” According to Tunis, she believed Respondent’s references to Irene related to the student’s behavior. Tunis recalled that Respondent eventually left saying she had a headache and was taking a half-day off.²

Tunis testified that Respondent was upset and angry when she visited her office on November 5 and conducted herself as if she were at her wits end. The counselor described Respondent’s voice as a “scream,” and further testified that she would not even be able to demonstrate the character of Respondent’s voice unless she were very upset. Based upon Respondent’s behavior and statements, Tunis stated, she believed at the time that Respondent felt that Irene and Respondent’s other students were jeopardized by Irene’s conduct.

Tunis recalled that on “multiple occasions” prior to November 5 Respondent had told Tunis that she believed Irene was a threat to her other students.

According to Respondent, after the hallway incident she felt bad and went to the counselor’s office where she knew Irene was meeting with Tunis. Respondent recalled that when she arrived at the office she overheard the counselor telling Irene something about leadership and took the opportunity to tell Irene -with a “stern classroom voice” - “that’s right you are not going to be a leader; you cannot bully, its not fair to the other

² Due to the discipline at issue herein, Respondent did not return to the school.

students in the class. This has got to stop.” To which, Respondent testified, Irene replied loudly; You cannot put your hands on me, and Respondent answered; “yes I can when you are about to harm other students.”

The Investigation

Following her meeting with Irene, Tunis brought the student to Assistant Principal Shanell Maddrey and informed Maddrey of events. Maddrey sent Irene to the school nurse to be checked out and contacted Irene’s mother to inform her of the matter. Maddrey and Tunis thereafter reported the matter to school principal Thomasine Goins. Goins completed an Institutional Abuse (IAIU) notice and instructed Maddrey to conduct an investigation. Although Goins asked Maddrey to speak with Respondent, Goins was unable to do so that day because Respondent had left the building on pre-approved sick leave. Goins did not thereafter speak with Respondent about the incident and Respondent never offered the assistant principal a statement.

As part of her investigation Maddrey spoke with and requested statements from counselor Tunis and fifth grade teacher Choyce; reviewed a security tape of the hallway incident and interviewed Irene and three other students.³

Student Statements

According to the statement about the November 5 hallway incident given by Irene to Maddrey, Irene recalled that Respondent was screaming at Irene and a classmate

³ The resulting “statements” of the four students taken by Maddrey are not written or signed by the involved students. Instead, they are based upon notes taken by Maddrey from her interviews of the students. Although the statements represent that interviewees were conducted in the presence of Guidance Counselor Tunis, Tunis denied she was present for any such student interviews.

because they were twirling in the hallway and that Respondent pushed Irene into the wall and had her hand on Irene's chest. Irene then tried to move Respondent's hand away and Respondent said "don't touch me." According to Irene, Respondent pushed her into the wall once, kept pushing Irene's hand away and hit Irene in the chest three times before Mrs. Choyce came out into the hallway. At the hearing Irene testified that as she was spinning around in the hallway Respondent pushed her to the wall and hit Irene banging her into the wall and that when Respondent hit her it was with a fist. Irene admitted that she had been told by Respondent not to spin, that she had hit a student in the past while she was twirling, and that on November 5 she was not on the correct side of the hall waiting with the other students, that she was not listening to Respondent and that when she went to the correct side of the hall she (Irene) hit a classmate.

During her interview, student Toni Ann stated that she was playing in the hallway with Irene and that when Respondent told them to stop Irene continued to play; that Respondent "pushed or smacked" Irene into the wall and that Mrs. Choyce came out into the hallway, began talking with Irene and Irene then began to cry. According to another student, Jamere, he recalled that Irene kept hitting people in the hallway, Respondent told Irene to stop and pushed Irene at which point Mrs. Choyce came out into the hallway. Finally, student Jay'lonna stated that Respondent punched Irene in the chest "like two time really hard," the student and teacher began to argue and they all went into class.

Meghan Choyce

Fifth Grade Language Arts teacher Meghan Choyce testified at the hearing that while she was teaching on November 5 her attention was drawn by a loud bang in the hallway. She went out into the hallway to investigate and saw Irene who appeared

visibly, but not uncontrollably, upset. Irene told Choyce her chest hurt and when the teacher asked why, Irene responded that Respondent had “pushed” her. Choyce then sent Irene to the office of counselor Tunis.

Security Tape

As part of her investigation Maddrey also reviewed a security tape of the November 5 hallway incident. The tape consists of sequential pictures of the hallway outside of Respondent’s classroom taken approximately every second for 48 seconds beginning at 10:57:21 A.M. Because the tape does not record sound and consists of only a series of still photographs creating a crude, stop-motion-like movie, there is likely conduct that is not recorded. However, upon review of the security tape one gets the gist of what took place.

The tape begins with a view of a group of students milling around in a relaxed line on the left side of the picture; half way down the hall along a wall of lockers between two classroom doorways.⁴ The nearest doorway to the viewer is that of fifth grade language arts teacher Meghan Choyce’s classroom. Respondent’s classroom door is farther down the hall, away from the viewer. As the tape begins, Irene can be observed “twirling” with her arms outstretched in the middle and the right side of the hall. As Irene gets to a point across the hall from the other students Respondent approaches Irene with her own arms stretched out. Irene then twirls away from Respondent toward the left side of the screen. Contrary to the assertion of the District, the video alone does not establish that Respondent “directed” Irene toward the left side of the hallway toward the other

⁴ The doorways each have a recessed alcove large enough for the door to be opened without extending into the hallway itself.

students. The teacher merely follows Irene as she twirls keeping herself between Irene and the majority of the group of students who were positioned between the two doorways. At 10:57:36 the tape shows Irene bumping into a student who was standing in line next to the doorway of Mrs. Choyce's classroom. Irene collided with the other student with enough force to cause the student, a girl substantially larger than Irene, to abruptly fall into the recessed doorway, out of the sight of the viewer. The film further shows that Irene does not fall to the floor because Respondent catches the student half way down her descent. Respondent then lifts Irene using a hand on each of the student's upper arms and at 10:57:39 stands Irene up against the wall of lockers to the viewer's left. At 10:57:40 Respondent removes her hands from Irene and takes a step away. At 10:57:41-42 the student who had been pushed by Irene into the door-well reappears and stands with her back to the camera somewhat obscuring the view of Irene and Respondent. At 10:57:42 Respondent returns to Irene and appears to hold Irene against the lockers with one hand on each of the student's shoulders until 10:57:44, However, the view during this approximately three second period continues to be obscured by the second student and the viewer cannot clearly observe what, if anything, Respondent does to Irene. By 10:57:45 Respondent has removed her hands from Irene and turned toward her other students. Ms. Choyce then comes into the hall, speaks with Irene and leads Irene into her classroom.

Decision to Recommend Tenure Charges

Assistant Principal Maddrey completed her investigation and submitted the results to School Principal Goins. Goins reviewed the investigation and primarily relied upon the

security tape to conclude that Respondent had not acted appropriately. In this regard, Goins explained, she interpreted Respondent holding her arms out in opposition near Irene as a teacher “going after a student.” Goins testified that Respondent should not have had to rely on physical conduct to interact with Irene; Respondent should have had a relationship with Irene by then that would have resulted in the student responding to verbal commands. Having viewed the security video, Goins did not believe any of the other students were in danger from Irene and she believed Respondent had no reason to touch the student. Goins forwarded the investigation to the School District’s superintendent.

The Decision to Certify Tenure Charges

School District Superintendent Thomasina Jones reviewed the investigation performed by Maddrey, certified the tenure charges and forwarded the matter to the School Board. Jones testified that she reviewed the security tape several times and observed Respondent; (1) encourage Irene to move toward the other students, (2) push Irene up against the wall and (3) hold Irene against the wall. In the opinion of the superintendent, she saw no reason for Respondent to use physical force under the circumstances. Jones did not observe Irene hurting anyone else and there was no “disturbance” that may have arguably excused Respondent’s use of physical force, Jones testified. As for the conduct of Respondent in the office of councilor Tunis, Jones continued, that conduct amounted to a verbal assault on the student; the conduct demeaned the student and it was wholly inappropriate for a teacher to tell a student that the teacher has the right to push and poke the student.

In the view of Superintendent Jones, if Irene had the history of aggressive behavior Respondent has now claimed in her defense to the tenure charges, there would have been an I. E. P. established, but no such special plan had been initiated by Respondent or otherwise established. Jones also testified that she reviewed Irene's disciplinary file and found only a single complaint filed by a classroom aid and not relating to any bullying or aggressive behavior by Irene.

Jones confirmed that the report to the IAIU did not result in a finding of assault by Respondent; but further explained that such is not unusual in her experience.⁵ Jones admitted that the decision to certify tenure chargers have nothing to do with Respondent's performance as a teacher over 22 years; that such is based entirely upon the events of November 5. Based upon the November 5 incident alone, Jones testified, she concluded that Respondent should not be given further opportunity to be with students.

Respondent

According to Respondent, in the six to eight week period she taught Irene, the student demonstrated bullying behavior by punching, hitting and verbally abusing other students and being verbally combative with Respondent. According to Respondent, teaching Irene was "a battle" - the student would not let Respondent teach in her classroom. Contrary to the statements of District witnesses, Respondent testified that she reported Irene at least twice for fighting and putting her hands on other students and that, as is the practice at the Cherry Street School, her reports were given back to her to keep

⁵ The report of the Institutional Abuse Investigation Unit of the New Jersey Department of Children and Families offers un-adjudicated findings of the Unit's investigation. The findings of the investigation are neither conclusive nor considered binding upon the school district. I did not give the report any persuasive weight in coming to my conclusions herein.

paperwork down. Respondent offered un-contradicted testimony that in addition to her two write-ups on Irene, prior to the November 5 incident Respondent used various other strategies to control Irene's behavior, including (1) telling Irene not to "twirl" anymore – particularly after another student was almost hit in the eye with a pen in Irene's hand as she twirled; (2) a ticket reward system for good behavior and (3) calling Irene's mother "almost every day for a month." Respondent testified that she believed Irene twirled as a mechanism to hit other students and then feign innocence with a "my bad; I was just being a tornado" comment.

Respondent recalled that on November 5 she had a debilitating sinus headache and because her classroom aide was unable to monitor the after lunch line-up as she usually would have, Respondent did so. She recalled that when she observed Irene once again engage in her twirling conduct, she was reminded of the earlier incident with Irene almost strike another student in the eye with a pen. Respondent admitted she sort of "freaked" and went to Irene and told the student to stop and put her hands down. At that point Irene went to the other side of the hall and fell down. Respondent recalled picking Irene up, standing her up and pointing at her saying "don't move." Respondent recalled that Irene didn't move and she was then able to go focus on her other students.

Respondent denied that she slammed the student against the wall of lockers, or that she had any contact with Irene in the student's chest, whether pushing, poking or hitting.

Respondent recalled that when she stood Irene up and told her not to move the student developed a "mean look" on her face and under her breath said either "fuck you," or "fuck you bitch."

Following events in the hallway, Respondent went to her classroom and awaited the arrival of her classroom aide who was going to substitute for her for the afternoon. When the aide arrived, Respondent gathered her things and left the classroom. She testified that she “felt horrible” and went to the office of counselor Tunis where she knew Irene had been sent. There Respondent recalls telling Irene, in her “stern teacher classroom voice,” that the student was not going to be a leader, that she cannot be a bully, that it was not fair to the other students in the class, and that “this has got to stop.” Respondent recalled that Irene replied that; “you can not put your hands on me.” To which Respondent responded loudly; “yes I can when you are about to harm students.”

Respondent further testified that she is aware of the law and her obligation to report bullying behavior, but that she did not do so with Irene because she wanted to exhaust other possibilities before doing so. Respondent further testified that on November 5 she did nothing wrong either in the hallway or in the office of the school counselor. She is very protective of her students, she explained, and on November 5 was protecting her students from a very dangerous student.

Positions of the Parties

The School District

The School District asserts that the evidence supports its tenure charges. Respondent’s conduct of November 5 was unbecoming a staff member. Respondent assaulted a student, pinned the student against the hall lockers, made inappropriate threats to the student and made inappropriate comments to the student. Respondent’s defense,

the School District argued, is not supported by the facts. In this regard, the claim that the involved student was a danger to others and had a history of bullying and other dangerous behavior is belied by Respondent's failure to have ever filed a written complaint about the student or refer the student to a child safety team. Nor did Respondent show that she was privileged to engage in corporal punishment of Irene under NJ Statute 18A: 6-1 in order to; "quell a disturbance, threatening physical injury to others." The student was not threatening to anyone, the District argued, and it was Respondent who caused any threat of harm by directing Irene from the isolated safety of across the hall toward the gathering of other students. Considering the gravity of Respondent's conduct on November 5 the District had good reason to conclude that Respondent should no longer have contact with the children of the District.

The Tenure Charges should be sustained and warrant the dismissal of Respondent, the District concluded

Respondent

Respondent asserted that she did not slam or push the student against the wall or hit or otherwise harm the student. Under the circumstances, Respondent argued, where she had previously observed the student engage in behavior harmful to other students, and reasonably concluded that the student was purposely attempting to harm other students on November 5, her conduct was permissible and appropriate to protect her other students.

Discussion

Considering the full record in this matter including all testimony, evidence and argument of the parties, I conclude that the District had good and sufficient cause to conclude that on November 5, 2012 Respondent engaged in conduct unbecoming a member of the staff. However, the record does not support a finding that the unbecoming conduct in which Respondent engaged was as egregious as that claimed by the District, or otherwise sufficient to support the dismissal of Respondent.

The Unbecoming Conduct of Respondent

I am not convinced that the evidence establishes that Respondent engaged in the assault on Irene that the District insists occurred. In support of its charge of assault, at the hearing the District asserted that in addition to pinning the student against the wall of lockers, Respondent hit, punched or struck the student. The item of evidence of the November 5 hallway incident that the District's superintendent identified as the primary motivation for the District's conclusion as to the egregious nature of Respondent's conduct is the 48 second security video of the event. In regard to the content of the video, various District witnesses testified that the video shows Respondent; (1) aggressively approaching Irene, (2) foolishly directing Irene toward the group of other students, (3) causing Irene to fall, (4) slamming Irene up against the wall of lockers, (5) pinning Irene against the lockers or (6) hitting Irene. A neutral viewing of the video does not show the aggressive conduct perceived by District witnesses.

The record does not support a conclusion that Respondent engaged in aggressive conduct by extending her arms out as she instructed the student to stop twirling. Rather, I

find the conduct consistent with both a hands-off attempt to control the child's behavior and Respondent's expressed concern for her other students. Nor does the video show that Respondent "directed" Irene toward the other students. Although Respondent blocked the student's path, there is no indication on the tape that Respondent did anything other than follow the student and attempt to keep her body between the whirly Irene and the main congregation of her other students. Nor does the video establish a causal connection between Respondent's conduct and Irene bumping into another student. In this regard, I note that the victim of Irene's twirling was significantly larger than Irene and that Irene hit the larger student with such force as to propel that second student out of sight and into the classroom door alcove where that second student likely caused the banging noise heard by Mrs. Choyce. Irene's collision with her larger classmate is plainly the most violent conduct documented by the video and supports Respondent's assertion that she believed Irene's conduct placed other student in danger.

Contrary to the view of District witnesses, the video does not show Respondent picking Irene up off of the floor. Rather, the video shows Respondent catching Irene on her decent by the upper arms and standing the child up next to the wall of lockers. There is nothing in the video to suggest that at that time Respondent "slammed" Irene against the lockers, pushed Irene on the chest or hit Irene. Because the view of Respondent and Irene is thereafter obscured by the return of the second student from the alcove, it is unclear what happened next. It appears that Respondent turned to her side and stepped away from Irene a half a step, but then quickly returned back to the student and at the very least placed her hands again on Irene's arms. Although the general movement of Respondent as she return to Irene appears more aggressive than the initial effort of

Respondent to catch Irene and stand her upright, a close review of the video does not reveal whether Respondent then did or did not hit, poke, push or point at the student.

Contrary to the argument of the District, I find that the evidence does not support a finding that Respondent engaged in inappropriate conduct toward Irene at any time prior to the point when Respondent turned back toward Irene in the video. In determining what took place when Respondent returned to Irene, I find the evidence in the record that is the most contemporaneous with the incident offers the most accurate account of what took place. Herein, such is the statement of Irene herself to Mrs. Choyce made only seconds after the incident. According to Choyce when she discovered Irene in the hallway and asked the student what was the matter, Choyce recalled Irene stating that her chest hurt because Respondent had “pushed her.”

Consistently with the “pushing” initially reported by Irene, student Toni Ann told Assistant Principal Maddrey that Respondent “either pushed or smacked Irene into the wall...” and student Jamere reported to Maddrey that Respondent “told Irene to stop, and ... pushed Irene...” Based upon such evidence I find that the second time Respondent had contact with Irene on the video, she pushed the student back to where she had initially instructed the student to stand. Although I find such pushing constitutes conduct unbecoming, I do not find that Respondent punched, hit or otherwise struck Irene.

As for Respondent’s conduct in the Office of counselor Tunis, I credit the testimony of counselor Tunis and find that Respondent screamed at the student and gave the inaccurate (and thereby threatening) message that the pushing the teacher had done to the student in the hallway was permitted.

Appropriate Punishment

Although the conduct of Respondent pushing a student and screaming at and threatening the student was unacceptable and warrants significant discipline, the conduct did not rise to the egregious level of “hitting,” “punching” or “striking” the student that the District asserted took place. Bearing such in mind and recognizing that; (1) the incident was an isolated event in the 22 years of service Respondent has given the District, (2) that during such a long period of service Respondent had no discipline issues, and (3) that during such a long period of service Respondent had no performance issues, and considering that Respondent credibly testified that she cares deeply for all of her students, I am persuaded that as a consequence of the suspension issued herein Respondent will correct her conduct and will not engage in similar conduct unbecoming in the future. As a result, I find that dismissal is not warranted here.

Under the unique facts and circumstances of this case, I find that the appropriate discipline of Respondent is a suspension without pay for 120 calendar days from January 8, 2013 (as implemented by the District’s Board of Education) through May 8, 2013. Respondent shall not receive back pay or back benefits for her period of suspension; said period of unpaid suspension shall constitute the full measure of the reduction-in-salary penalty imposed against Respondent. The District shall return Respondent Hancock to her teaching position effective May 9, 2013.

Award

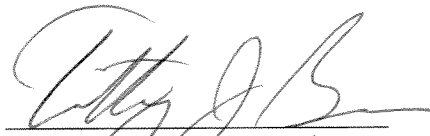
The charges are sustained only to the extent they are consistent with the findings of this Decision and Award, and Respondent Sarah

Hancock is thereby found to have engaged in conduct unbecoming a tenured teacher. All other charges are dismissed.

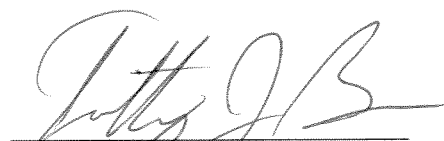
As penalty for the conduct unbecoming found herein, the salary of Respondent Sarah Hancock shall be reduced for the current school year only by the salary lost as a consequence of a 120-day unpaid suspension beginning January 8, 2013 and ending May 8, 2013.

Respondent Sarah Hancock shall be reinstated to her teaching position effective May 9, 2013.

Dated: April 10, 2013


Timothy J Brown, Esquire
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket case No. 7-1/13 relating to tenure charges against Sarah Hancock on Wednesday, April 10, 2013.


Timothy J Brown