

#331-13

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of Tenure Charges Against Maren Sugarman:

ORANGE TOWNSHIP BOARD OF EDUCATION

Agency Dkt No.
140-6/13

Petitioner,

- and -

MAREN SUGARMAN

Respondent.

**OPINION
AND
AWARD**

Before: Joyce M. Klein, Arbitrator

Appearances:

For the Petitioner:

Melvin C. Randall, Esq.
Love & Randall

For the Respondent:

Nancy I. Oxfeld, Esq.
Oxfeld Cohen, P.C.

Pursuant to N.J.S.A. 18A:6-16, as amended by *P.L. 2012, c. 26* ("TEACHNJ"), the tenure charges brought by the Orange Board of Education (the "Board" or "Petitioner") against Maren Sugarman ("Sugarman" or "Respondent") were referred to me for a hearing and decision. I conducted a hearing at the Board's offices in Orange, New Jersey on August 7, 2013. In addition to counsel for each party, Belinda Scott-Smiley, Administrative Assistant to the Superintendent of Human Resources/Operations, was present on behalf of the Board of Education.

At the hearing, the parties argued orally, examined and cross-examined witnesses, and introduced documentary evidence into the record. Testimony was received from Orange Preparatory Academy Principal Darrell Medley, Student N.M., Belinda Scott-Smiley, Human Resource Administrator and Respondent Maren Sugarman. Post-hearing briefs were received on August 27, 2013 and supplemental statements were received by August 30, 2013, whereupon the record was closed.

ISSUE

Did Respondent exhibit conduct unbecoming a teacher when she slapped a minor student, N.M.? If so, is the remedy appropriate?

THE CHARGES

The Sworn Tenure Charges brought against Maren Sugarman on June 14, 2013 are in pertinent part as follows:

The undersigned, Belinda Scott Smiley, Administrative Assistant to the Superintendent for Operations/Human Resource Services for the Orange Township School District, County of Essex, State of New Jersey, pursuant to *N.J.S.A. 18A:6-10* and *18A:6-11*, hereby institutes the following tenure charges against Maren Sugarman, for conduct unbecoming an employee.

Charge One Unbecoming Conduct

1. On or about March 29, 2013, Maren Sugarman exhibited conduct unbecoming a teacher when she slapped a minor student.
2. On or about March 29, 2013, Respondent inflicted capital punishment on a minor student in violation of *N.J.S.A. 18A:6-1* and School District Policy.

BACKGROUND

Maren Sugarman has been a teacher at the Orange Preparatory Academy ("OPA") (previously known as the Orange Middle School) since the 2006-2007 school year. Before becoming a teacher, Respondent had a long career in theatrical arts, including acting and box office management. She turned to teaching initially as a long-term substitute in the Westfield School District and as a teaching assistant in Belleville at the Therapeutic School of New Jersey. As a

result of these experiences, she determined to become a teacher and applied through the alternate route to become certified in drama and speech arts. After passing her provisional year, Respondent received her permanent certificate and subsequently acquired tenure with the Orange School District.

Respondent received "proficient" evaluations and positive ratings throughout her years for the Orange School District. In particular, Respondent received proficient ratings on her evaluation in the area labeled "creating an environment of respect and rapport". For example, for the 2011-2012 school year, the commentary for that area includes the following:

Mrs. Sugarman's interaction between the teacher and students and amongst students are polite and respectful, reflecting general warmth and caring and are appropriate to the cultural and developmental differences among groups of students.

In December of 2010, Respondent was cited for displaying "inappropriate behavior in front of students and staff" during a rehearsal for a drama production. At that time, her supervisor advised her to seek anger management counseling.

March 29, 2013 was a half-day of school, and the first block of the day had been reduced to thirty minutes. On March 29, 2013, during the truncated first block, eighth grade drama students were working on a group project to create a promotion for a Broadway show including music, lighting, drama and choreography. This was the second day that students were working on this project. The day before, students had been placed into groups and had begun their projects. Thirteen year old student N.M. had been assigned to a group with four students but only two were present on the 29th, N.M. and Student K. N.M. began to bother Student A.P. and her group. Students were either writing on each other's projects or were threatening to do so. Respondent assured them that these marks would not impact their grades. Respondent was attempting to work with other students in the class while keeping N.M. and A.P. focused on their work.

While Respondent was reviewing the work of another group, A.P. placed a mark on N.M.'s paper, upsetting him. N.M. threatened to retaliate. Then A.P. put another mark on his paper. According to N.M., he called loudly for Respondent, but he felt she was not taking action. According to Respondent, she replied for him to "wait a second." Respondent encouraged N.M. to continue to work on his project while Student J, who was also in A.P.'s group, suggested that he cover the marks made on N.M.'s paper. With N.M.'s consent, J created a swirl design to cover the marks made by A.P.

Because A.P.'s group was almost finished with the project, Respondent placed it on her desk in an effort to defuse the situation between N.M. and A.P.

However, N.M. left the stage where he had been working and, with red marker in hand, approached A.P.'s project. N.M. explained that he was angry because he had reported to Respondent that A.P. had placed a mark on his paper and she took no action. So, after A.P. continued to bother N.M., he decided to retaliate by placing a mark on A.P.'s paper. N.M. acknowledged that he walked over to Respondent's desk and put two lines on A.P.'s paper. Respondent reached to take the marker from N.M.'s hand and he resisted and pulled back. Respondent recounted, "then my hand went up to his face and I gave him a slap."

N.M. testified that she was throwing him around by the collar and slapped him across the face. According to N.M., Respondent came over to him and started throwing him around and said, "what the hell is wrong with you" and slapped him hard in the face. Other students reported that Respondent was pulling N.M. and the slap was "loud" and "hard." N.M. reported being stunned by the slap and immediately gathered his belongings and left the room. The slap caused a commotion, or as Respondent described, "the class went bonkers." A security officer came to the room and N.M. went to the principal's office.

N.M. testified that after the incident, he was frequently harassed and ridiculed by his classmates including slapping gestures and teasing him about what Respondent did. N.M. testified that he was embarrassed and humiliated. This teasing rose to the level that he asked his parents to transfer him to another school. N.M. previously attended the Park Avenue Elementary School in Orange as a sixth grade student and then began at OPA as a seventh grade student where he received good grades, sometimes achieving the honor roll, and did not have disciplinary problems.

Respondent testified that she immediately realized that her actions were inappropriate and sought to apologize. N.M. acknowledged that Respondent sought to talk to him but that he was too upset to hang around. Student Q wrote in her statement that Respondent told N.M. to come back and tried to say "sorry" but N.M. refused.

N.M. went to the nurse who found no injury and noted that "no swelling or redness was observed." Respondent testified that she was angered by N.M.'s actions and when she engaged with him she had a "flashback" to when she was bullied in school as a child. Respondent acknowledged that she overreacted and sought to apologize. After N.M. reported the incident, Respondent met with School Principal Darrell Medley and acknowledged that she had made a mistake by hitting N.M. and expressed regret that she had done so.

Respondent was suspended from school and immediately entered treatment at the Recovery Institute of South Florida (RISF) where she remained for 60 days. Respondent testified that at RISF, she learned that she suffered from PTSD as a result of being physically and verbally bullied as a child.

Respondent testified that the look in A.P.'s eyes when N.M. disrupted her work triggered her response. Respondent testified further that tension in her life, including a suicide attempt by her 15 year old daughter and a lack of sleep the previous night, had let her stress and anxiety reach a dangerous level. According to Respondent, at RISF she learned techniques to deal with stress to avoid a similar incident.

Respondent testified that at the time of hearing, she had not yet obtained a therapist for treatment of these issues because she continued to be involved in family therapy to address her daughter's issues. Respondent testified further that she was actively searching for a therapist to continue her treatment.

DISCUSSION

The Board asserts that it has proven the tenure charges that Respondent inflicted corporal punishment on a minor student in violation of N.J.S.A. 18A:6-1 and school district policy and that she engaged in conduct unbecoming a teacher. The Board emphasizes that Respondent admitted that she slapped N.M. in the face. The Board maintains that none of the four exceptions to the prohibition on inflicting corporal punishment on a student apply in this case. The Board maintains that Respondent's action in slapping N.M. across the face was not warranted, reasonable or necessary. The Board cites In the Matter of the Tenure Hearing of Thomas Tiefenbacher, 1982 S.L.D. (February 22), aff'd, St. Bd. 1982 S.L.D. (August 4), where a male teacher was found to have grabbed and pushed a 12 year old boy against a wall in an effort to reprimand him. In that instance, the ALJ ordered dismissal, the Commissioner of Education reversed and ordered forfeiture of 120 days of salary and the State Board of Education reinstated the ALJ's decision ordering dismissal. The Board emphasizes the teacher's dismissal was upheld for a single incident of corporal punishment despite an unblemished 15 year teaching record and no physical injury to the child.

The Board contends that Respondent should be terminated because she slapped N.M. in the face in the presence of the entire class. Respondent acknowledged that she was angry when she slapped N.M. and thus she sought to punish him. Students in the class described the slap as loud and hard and even student A.P. stated that Respondent was wrong when she slapped N.M. The Board emphasizes that the slap brought N.M. to tears, that there were other disciplinary measures that were available to her and that she chose not to utilize. The Board characterizes Respondent's conduct as egregious and suggests that the nature of the incident creates a dim prognosis for her continued efficiency and effectiveness in the school district. The Board seeks to prohibit and properly penalize the unreasonable use of physical force by professional teachers. For these reasons, the Board contends that Respondent's conduct on March 29

should be found to be conduct unbecoming a teacher and the appropriate penalty should be dismissal.

Acknowledging that this case raises a question as to what is the appropriate penalty, Respondent maintains that a brief suspension is sufficient to address her actions that were unbecoming a teaching staff member. In light of her good career and her efforts to seek treatment to ensure that her action is not repeated, Respondent maintains that the appropriate discipline for this single action is a brief suspension. Emphasizing that the Board of Education maintains the burden to prove that her conduct was unbecoming a certificated teacher, Respondent emphasizes the standards governing determination of tenure charges. Citing Redcay v. State Board of Education 130, N.J.L. 369, 371 (Sup. Ct. 1943) aff'd. 131 NJL 326, 327 (E.A. 1944) where the standard for reviewing the conduct for a tenured teacher is in the context of an entire career. In other words, the Commissioner has applied the Redcay standard to determine penalty by balancing the teacher's record in the school district with the misconduct. Further, Respondent emphasizes the factors considered in determining the penalty in In the Matter of Tenure Hearing of Edith Craft, School District of the Township of Franklin, Somerset County, C.D. (September 1, 2001). In that case, the ALJ determined that Craft's conduct should be evaluated to determine whether it was "premeditated, cruel or vicious or done with an intent to punish" and whether Craft had shown a "pattern of misconduct" or whether her conduct had "an injurious effect on the maintenance of discipline and the proper administration of the school system." Further, the ALJ examined whether Craft's conduct had any "immediate impact" on a student or whether there was evidence of provocation. In that instance, Respondent emphasizes that Craft had reflexively struck back at a student who hit her. Craft had a good record, her action was not premeditated, and she acknowledged the nature of her infraction.

Further, Respondent cites the situation in In the Matter of the Tenure Hearing of Gena Priano-Keyser, School District of the Borough of Chatham, Morris County, C.D. 43 (2010). In that case, the Commissioner of Education imposed a three month forfeiture of pay against a speech and dramatic arts teacher with ten years of service to the District after a student fell and hit his head when the teacher left the classroom.

Respondent also cites a recent Appellate Division decision in In the matter of Tenure Hearing of Susan Parezo, School District of the Borough of Lakehurst, Ocean County, Docket No.: A-1442-11T3, decided August 28, 2013 where the Commissioner of Education and the Appellate Division differentiated between teaching staff members who understand that they have acted appropriately and are not likely to repeat this conduct and those who do not. In this case, Parezo taped the mouth of a second grader, denied that she had taped his mouth and did not acknowledge that these actions were inappropriate. The Appellate Division upheld the determination of the Acting Commissioner of Education that:

Finally, particularly disturbing here is [appellant's] refusal – even at this late date – to recognize the seriousness of her actions or take responsibility for them. Rather she continues to view the whole incident as de minimus in nature and scope and remains adamant that the Board's witnesses lied, for one reason or another, about what they saw. Given her steadfast attitude in this regard the Commissioner is not persuaded that such conduct would not be repeated in the future. Under these circumstances, the Commissioner cannot entertain the prospect of [appellant's] return to the District and the resultant potential for the perpetration of an unhealthy education environment. Parezo, slip opinion, pp. 25-26.

Respondent also cites several other instances where teachers with good records acted inappropriately, but did not engage in corporal punishment, and received a penalty but did not lose tenure. Respondent also compares instances of judicial misconduct which resulted in censure or suspension but not a loss of public employment. Respondent maintains that because judicial appointments are positions requiring integrity and public perceptions, these cases are appropriate for consideration in comparison to Respondent's conduct.

It is not disputed that Respondent slapped 13 year old N.M. across the face when he failed to let go of a marker she tried to pull out of his hand. Respondent accepts responsibility for her misconduct and asserts that her previous good record and her efforts to obtain treatment to recognize and control her anger both mitigate her conduct. The Board of Education maintains that Respondent's conduct was egregious and unreasonable and likely to be repeated.

Initially, Respondent's conduct must be evaluated under the terms of the statute governing corporal punishment of students. N.J.S.A. 18A:6-1 provides as follows:

No person employed or engaged in a school or educational institution, whether public or private, shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amounts of force as is reasonable and necessary:

- 1) to quell a disturbance, threatening physical injury to others;
- 2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil;
- 3) for the purpose of self-defense; and
- 4) for the protection of persons or property;

and such acts, or any of them, shall not be construed to constitute corporal punishment within the meaning and intendment of this section. Every school resolution, by law, rule, ordinance, or other act or authority permitting or authorizing corporal punishment to be inflicted upon a pupil attending a school or educational institution shall be void.

It is undisputed that Respondent slapped Student N.M. across the face. In this case, there is no basis to find this conduct justified under one of the exceptions to N.J.S.A. 18A:6-1. N.M. was attempting to write on another student's project, but was not creating a disturbance or threatening physical injury to another. Nor was he in possession of weapons or other dangerous objects. There is no allegation that Respondent acted in self-defense or to protect persons or property. Nor is there evidence that immediately before she slapped N.M. Respondent did anything to verbally dissuade N.M. from marking A.P.'s project. Rather, her effort to diffuse the situation between A.P. and N.M. was to remove A.P.'s project to her own desk. Although Respondent did separate N.M.'s group and A.P.'s group and make efforts to keep everyone focused on their projects, it is notable that Respondent did not attempt to verbally admonish N.M. or take any other action immediately prior to the physical act of attempting to grab the marker from his hand and then when he did not release it, slapping him across the face.

Rather, Respondent acknowledges that she engaged in misconduct and explains the personal circumstances including lack of sleep, attempted suicide by her daughter and PTSD from experiences being bullied as a child. Respondent would rely upon these circumstances, together with her teaching record to mitigate her conduct. The Board is not certain that such conduct won't be repeated and emphasizes the consequences of Respondent's misconduct to N.M.

In this instance, unlike the Craft case, Respondent's slap of N.M. was not provoked. N.M., by attempting to write on another student's project was acting out in a manner common to 13 year old children. This conduct should not provoke or warrant any corporal response, much less a hard slap across the face. There is no doubt that this slap caused the class to spiral quickly out of control and resulted in the appearance of the security officer. This conduct also led to repeated teasing of N.M. to the point where he felt the need to change schools.

Respondent brought forth several examples of seemingly egregious behavior that did not result in a loss of tenure for the teacher. Respondent also brought forth several examples of egregious behavior by members of the judiciary that did not result in their loss of their position despite their conduct that

might have violated the public trust. None of these examples, however, involved an unprovoked instance of corporal punishment. While these determinations provide apt guidance for factors to be considered, they cannot be found to govern this situation.

Turning to consideration of factors that could serve to mitigate the penalty of termination, there is no doubt that Respondent recognized immediately that she acted inappropriately, apologized to Mr. Medley and attempted to apologize to N.M. Respondent also sought treatment to recognize the reasons she reacted by slapping N.M. and to develop coping mechanisms to insure that such misconduct would not be repeated. Respondent's delay in continuing the treatment she began at RISF, though understandable given her daughter's situation, is troubling. Further, although Respondent maintained a good record until this incident, her teaching career, which began in the 2006-2007 school year, is brief. And, during this brief career, Respondent was advised to seek anger management counseling after "displaying inappropriate behavior in front of students and staff."

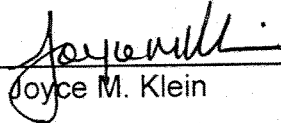
When these factors are taken together, Respondent's recognition of her misconduct, her efforts to correct her behavior, and her teaching record are not sufficient to mitigate her egregious conduct in slapping N.M. across the face in violation of N.J.S.A. 18A:6-1. The loss of control of her class, the resulting humiliation of N.M. which led to the need for him to switch schools support the Board's concerns that Respondent cannot continue to teach successfully in the District. The Board's doubts as to Respondent's ability to continue as an efficient and effective teacher in the School District are warranted. Under all of the circumstances present, Respondent's unprovoked slap across N.M.'s face justifies her dismissal.

Accordingly, the Board has proven the Tenure Charges of unbecoming conduct against Respondent and her dismissal is supported.

AWARD

The Orange Township Board of Education has met its burden of proving the charges that Respondent Maren Sugarman engaged in unbecoming conduct when she slapped a student across the face and that these charges warrant dismissal. The charges are sustained.

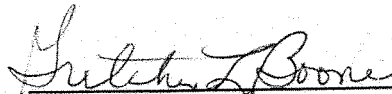
Dated: September 17, 2013
Ocean Grove, New Jersey



Joyce M. Klein

State of New Jersey }
County of Monmouth } ss:

On this 17th day of September, 2013, before me personally came and appeared Joyce M. Klein to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 04/30/2014