

IN THE MATTER OF THE TENURE :
HEARING OF JOAN MC NUTT, STATE- :
OPERATED SCHOOL DISTRICT OF :
THE CITY OF JERSEY CITY, HUDSON :
COUNTY, :

AND : COMMISSIONER OF EDUCATION

JOAN MC NUTT, : DECISION

PETITIONER, :

V. :

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF JERSEY CITY, :
HUDSON COUNTY, :

RESPONDENT. :

_____ :

SYNOPSIS

In the Matter of the Tenure Hearing of Joan McNutt, State-operated School District of the City of Jersey City, Hudson County AND Joan McNutt v. State-operated School District of the City of Jersey City, Hudson County

District certified tenure charges of unbecoming conduct against math supervisor and withheld her increment for the school year 1996-97 for allegedly distributing a portion of the 1995 Early Warning Test (EWT), a test she knew to be a secured test.

ALJ found that the District proved beyond a preponderance of the evidence the tenure charges against Ms. McNutt -- she distributed the EWT and she then lied to her supervisors about the incident thereby exhibiting a consciousness of guilt leading to the conclusion that she knew the breach of security she committed. ALJ ordered Ms. McNutt dismissed from her tenured position, finding that the seriousness of her conduct was such that it had potential damage for students and significant financial damage to the District.

Citing *In re Martone*, the Commissioner adopted the findings and determination in the initial decision. Commissioner ordered Ms. McNutt dismissed from her position as tenured teaching supervisor and further dismissed without prejudice her claim with respect to the denial of her increment for the 1996-97 school year. Commissioner directed the matter be transmitted to the State Board of Examiners for further appropriate action.

March 2, 1998

OAL DKT. NOS. EDU 11168-96 and EDU 5138-97 (Consolidated)
AGENCY DKT. NOS. 414-9/96 and 419-9/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Ms. McNutt’s exceptions and the District’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

Ms. McNutt contends in her exceptions that the testimony adduced at the hearing does not support the ALJ’s conclusions. Specifically, she maintains that, contrary to the ALJ’s findings, the testimony established that, prior to September 1995, she “***had absolutely no connection with instruction, with the faculty or with the Early Warning Test (EWT).” (Ms. McNutt’s Exceptions at p. 2) Ms. McNutt further asserts that the testimony does not support the ALJ’s finding that she attended “at least two meetings” during which security

measures of the EWT were discussed. (*Id.*) Rather, Ms. McNutt affirms that she “***had no exposure to the EWT whatsoever,” (*id.*) and argues that there was no testimony presented by the District which would confirm what was *actually* discussed at the meeting of August 31, 1995, as opposed to what was placed on the agenda. (*Id.*) Ms. McNutt maintains that she did not hear any discussion of the EWT at that meeting (*id.*), that she sent the EWT to the homes of the teachers “in the interests of time,” and her actions were not clandestine. (*Id.* at p. 3)

Finally, Ms. McNutt objects to the ALJ’s conclusion that she was aware that she had violated EWT test security “***because she lied to her two immediate supervisors during the preliminary investigation of this matter.” (*Id.*) Here, Ms. McNutt asserts that what she lied about was where she obtained the test, so as not to “get anyone else in trouble, and this was after she was told for the first time that she should not have distributed the tests.” (*Id.*) Prior to these meetings, Ms. McNutt claims she was unaware that she did anything wrong. Thus, she concludes that “***the initial decision of the ALJ [should] be rejected in its entirety[,], or in the alternative, [that her] increment for the 1996-97 school year be denied her.” (*Id.* at p. 7)

In reply, the District underscores Ms. McNutt’s admission, both in her exceptions and in the proceedings before the ALJ, that she sent copies of the math portion of the EWT to the homes of teachers in the District, and that she lied to her superiors when questioned about the same. (District’s Reply at pp. 1, 2) Further, contrary to Ms. McNutt’s claim regarding the meeting of August 31, 1995, *supra*,

the District provided testimony of Associate Superintendent Dr. Clausell and Division Director Elaine McGhee who both stated that they definitely remembered that the item on test security was mentioned and reviewed at that meeting. Furthermore, there was a second meeting with supervisors in early September 1995 where the ALJ found, as related by Ms. McGhee in her testimony, that the memo from the Department of Education (Exhibit P-2) was again given to Ms. McNutt. (*Id.* at pp. 2, 3)

Moreover, the District disputes Ms. McNutt's contention that, prior to September 1995, she had no connection with instruction. Here, the District asserts that Ms. McNutt's own testimony affirmed that she was a math teacher at Lincoln High School before becoming a supervisor, that she administered the HSPT-9 to her students, and was aware of the security of the test and the precautions taken for the HSPT. (*Id.* at p. 3)

As to her credibility, the District maintains that it is not reasonable to believe that Ms. McNutt mailed the secure 1995 EWT to the homes of the teachers merely, as she claims, "in the interests of time," when she could have hand-delivered them along with her delivery of the 1993 EWT to the teachers. (*Id.* at p. 4, citing to Initial Decision at p. 6) That she further failed to disclose the mailings to her supervisor suggests, the District contends, that Ms. McNutt was aware that the 1995 EWT was a secure instrument. (*Id.* at pp. 4, 5)

Thus, the District cites *In the Matter of the Tenure Hearing of DePasquale*, 92 N.J.A.R. 2d (EDU) 537, for the proposition that "***[a] board of education has the right to presume the basic honesty of its employees. A dishonest act by a public employee violates the public trust." (*Id.*, citing *In re Depasquale* at 540) The District further argues that case law establishes that "any employee who intentionally or knowingly provides untruthful information to a school district breaches a fundamental obligation of honesty and commits an act of misconduct warranting dismissal.***" (District's Exceptions at p. 7)

Finally, with respect to the issue of Ms. McNutt's increment withholding, the District notes Ms. McNutt's argument in her exceptions that she should not be dismissed, but should, instead, have her increment withheld. The District provides:

***Thus, even Ms. McNutt recognizes that the withholding of her increment was warranted. It is settled that the same conduct can support and lead to both dismissal as well as the withholding of increment. [In the Matter of the] *Tenure Hearing of Gilbert*, 1982 S.L.D. 274, 311, aff'd, 1982 S.L.D. 328 (St. Bd.). Accordingly, it is submitted that the Commissioner should affirm the increment

withholding as well as the ALJ's order to terminate Ms. McNutt's employment. (*Id.* at p. 9)

Upon careful and independent review of the record in this matter, which included transcripts from the hearing conducted at the OAL on November 13, 1997 and November 14, 1997,¹ the Commissioner finds no cause to disturb the credibility determinations and factual findings rendered by the ALJ. The Commissioner, therefore, concurs with the ALJ that the District has demonstrated by a preponderance of credible evidence that Ms. McNutt is guilty of unbecoming conduct by a teaching staff member. In so finding, the Commissioner notes that, contrary to Ms. McNutt's assertions, there is ample evidence in the record to conclude that, at the meeting conducted by the District on August 31, 1995, a meeting which Ms. McNutt attended, the memorandum from the Department of Education to all chief school administrators regarding test security was, indeed, reviewed, and Ms. McNutt was provided a copy of the memorandum. (T1:11, 12, 42, 76, 77, 100, 101; T2:69) Moreover, there is sufficient, credible evidence to conclude that Ms. McNutt was provided a second copy of the memorandum at a meeting in September of that year with Ms. McGhee, her supervisor, (T1:45), as well as a copy of the District's standard operating procedures with regard to test security (T1:79).

As to the recommended penalty of dismissal, the Commissioner references *In the Matter of the Tenure Hearing of Vincent Martone, State-operated School District of the City of Jersey City, Hudson County*, decided December 18, 1997, a recent and related decision concerning a math supervisor in the State-operated School District of the City of Jersey City who was found guilty of unbecoming conduct when he distributed a portion of the 1995 Early Warning Test, knowing that it was secure, to several teachers, including Ms. McNutt, herein. (*In re*

¹ The transcript from November 13, 1997 shall hereinafter be referred to as "T1." The transcript from November 14, 1997 shall be referred to as "T2."

Martone, decided December 18, 1997, Slip. Op. at p. 6; Initial Decision at p. 3) In that case, the Commissioner held that

breaches in statewide test security [are] a matter of utmost concern and will be dealt with severely. As stated by Assistant Commissioner, Division of Academic Programs and Standards, in a two-page letter dated April 19, 1995:

*****the reproduction of secure test items *** is strictly prohibited.** *Individuals who violate this prohibition risk personal sanction which could include suspension or revocation of their professional license. (Boldface sic) (emphasis supplied) (Exhibit P-7 in Evidence)*

The position of this agency is both clear and unequivocally communicated to school districts and staff throughout the state. Breaches of test security will not be tolerated. Therefore, the Commissioner finds that a single incident of this nature is “sufficiently flagrant” to warrant an employee’s dismissal, notwithstanding where, as here, respondent has had a long career with an apparently unblemished record. *Redcay v. State Board of Education*, 130 N.J.L. 369, 371 (Sup. Ct. 1943); *aff’d* 131 N.J.L. 326 (E.&A. 1944). Further, while the Commissioner finds that respondent’s behavior, as related by the ALJ in the initial decision, is particularly unbecoming for a supervisor, it cannot be countenanced for *any* teaching professional. The Commissioner has stated that “[b]eing a teacher requires *** a consistently intense dedication to civility and respect***.” *In the Matter of the Tenure Hearing of Robert H. Beam*, 1973 S.L.D. 157, 163. Further, teachers “***must exhibit a high degree of exemplary behavior.” *In re Tyler*, 13 N.J.A.R. 297, 308 (1991). This is so in that

[t]eachers are public employees who hold positions demanding public trust, and in such positions they teach, inform, and mold habits and attitudes, and influence the opinions of their pupils.*** *In the Matter of the Tenure Hearing of Ernest Tordo, School District of the Township of Jackson, Ocean County*, 1974 S.L.D. 97, 98.

Therefore, the Commissioner finds that, in view of all the facts, respondent’s proposed penalty wherein he would abandon his supervisor’s position in favor of a teaching position, would not be appropriate. Rather, in order to adequately impress upon respondent, and others, the extreme seriousness of his infraction and the Commissioner’s concern about the poor judgment displayed during the incidents leading to the instant tenure charges, the Commissioner finds that loss of tenure is fully warranted in this

instance. Therefore, the Commissioner adopts the recommended penalty of the ALJ and further finds this matter should be forwarded to the State Board of Examiners for such action it may deem appropriate with regard to respondent's certificates. (Slip Op. at pp. 11-12)

Finding that Ms. McNutt has raised no compelling reason to distinguish the instant matter from the matter *In re Martone, supra*, the Commissioner adopts the recommended penalty of dismissal, notwithstanding Ms. McNutt's apparently unblemished record within the District. Here, the Commissioner adds that the lapse in security caused the Department of Education to modify its plans for the development of the mathematics section of the March 1996 EWT, thereby resulting in an assessment of \$7,603 to the District for the special construction of a new mathematics section. (Exhibit P-7)

Finally, the Commissioner notes that, although this is a consolidated matter, joining the issue of the District's tenure charges against Ms. Nutt with the issue of her challenge of the District's decision to withhold her salary increment for the 1996-97 school year, the latter issue is not addressed in the initial decision. However, the Commissioner notes his concurrence with the following argument provided by Ms. McNutt to the ALJ:

McNutt avers that the denial of her increment was indeed disciplinary. As the Court well knows, the legislature in 1990 amended the New Jersey Employer-Employee Relations Act. Now included is a provision providing for the disposition of disciplinary actions taken by a school district *** and the bargaining agent of the staff. ***

It would appear *** that the proper avenue to be followed by *** McNutt would be before an arbitrator and not the Commissioner.

It is respectfully submitted to the Court that the tenure charges *** be dismissed and that the Court not act upon the increment cause, but instead refer the matter to the grievance procedure in place between the District and the appropriate bargaining unit for McNutt for disposition. (Ms. McNutt's Letter Brief, December 4, 1997 at pp. 4, 5)

Accordingly, for the reasons expressed therein, the Commissioner affirms the initial decision of the OAL and hereby orders that Ms. McNutt be dismissed from her position as tenured teaching supervisor with the State-operated School District of Jersey City as of the date of this decision. The Commissioner further dismisses, without prejudice, Ms. McNutt's claim with respect to the denial of her increment for the 1996-97 school year. Finally, this matter shall be transmitted to the State Board of Examiners, pursuant to the requirements of *N.J.A.C. 6:11-3.6*, for action against Ms. McNutt's certificate as it deems appropriate.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 2, 1998

² 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.