

IN THE MATTER OF THE TENURE :
HEARING OF LEWIS SHINKLE, :
SCHOOL DISTRICT OF THE TOWNSHIP : COMMISSIONER OF EDUCATION
OF HAMILTON, MERCER COUNTY. :
DECISION
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions were untimely, having been dated and filed August 3, 2004 in response to an Initial Decision mailed to the parties on July 19, 2004, and, therefore, these and the Board's reply exceptions were not considered herein.¹

Upon his full and independent review of the record,² the Commissioner concurs with the Administrative Law Judge (ALJ) that the Board has established, by a preponderance of the credible evidence, that respondent is guilty of unbecoming conduct by virtue of his engaging in a sexual relationship with L.K., a sixteen-year-old eleventh grade student at the Board's Nottingham High School, and that respondent's removal from his tenured teaching position is the only appropriate penalty.

In so determining, the Commissioner has given full consideration to all evidentiary proofs which comprise the record and recognized that of particular importance was the ALJ's assessment of the credibility of the witnesses. In this regard, the Commissioner is

¹ It is noted that at no time prior to the expiration of the time period for the filing of exceptions prescribed by *N.J.A.C.* 1:1-18.4 did counsel for respondent seek an extension of time within which to file exceptions in this matter.

² The record contains transcripts of the hearing conducted on November 20 and December 5, 2003, January 29, April 7, April 8, April 16, April 29, May 3, May 4, May 5, May 6 and May 7, 2004.

mindful that the ALJ's credibility determinations are entitled to deference. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility. *In the Matter of Tenure Hearing of Tyler*, 236 N.J. Super. 478, 485 (App. Div.) *certif. denied*, 121 N.J. 615 (1989)." *In the Matter of the Tenure Hearing of Frank Roberts*, 96 N.J.A.R. 2d (EDU) 549, 550. Indeed, with the 2001 amendment to the Administrative Procedure Act (*P.L.* 2001, *c.* 5, §4), the Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are 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's considered review of the record before him provides no basis whatsoever for alteration of the ALJ's determinations.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons clearly stated therein.³ It is hereby directed that Lewis Shinkle be dismissed from his teaching position with the School District of Hamilton Township as of the date of this decision. This matter shall be transmitted to the State Board of Examiners for action, as that body deems appropriate, against respondent's certificate.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: August 19, 2004

Date of Mailing: August 19, 2004

³ Also adopted is the September 4, 2003 interim order of the ALJ which, pursuant to *N.J.A.C.* 1:1-14.10(j) and 1:1-18.6, was reviewed at the end of the case rather than on interlocutory review.

⁴ This decision 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.* 6A:4-1.1 *et seq.*