

#413-04

OAL DKT. NO. EDU 2355-03, ON REMAND FROM EDU 6139-01

(OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu02355-03_1.html)

AGENCY DKT. NO. 328-8/01

IN THE MATTER OF THE TENURE HEARING :

OF JOHN E. BENNETT, SCHOOL DISTRICT :

COMMISSIONER OF EDUCATION

OF THE CITY OF ASBURY PARK, :

DECISION ON REMAND

MONMOUTH COUNTY. :

_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that, in light of respondent's guilty plea on May 29, 2003 to possession of a controlled dangerous substance within 1,000 feet of school property with intent to distribute, in violation of *N.J.S.A. 2C:35-7*, as well as possession of a controlled dangerous substance with intent to distribute while on or within 500 feet of a public housing project, in violation of *N.J.S.A. 2C:35-7.1*, the Board is entitled to prevail on its motion for summary decision as to Charge One. In this connection, the Commissioner recognizes, "[i]t is well established that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case." *Frank v. Ivy Club*, 120 *N.J.* 73, 98, citing *Cunningham v. Dept. of Civil Service*, 69 *N.J.* 13, 24-25 (1975). "Moreover, disputes as to the conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion for summary judgment." *Contini v. Board of Education of Newark*, 96 *N.J.A.R.* 2d (EDU) 196, 215, citing *Lima & Sons, Inc. v. Borough of Ramsey*, 269 *N.J. Super.* 469, 478 (App. Div. 1994); *see also, In the Matter of the Tenure Hearing of Andrew*

Phillips, School District of the Borough of Roselle, Union County, Commissioner’s Decision No. 129-97, decided March 20, 1997, and *In the Matter of the Tenure Hearing of Neal A. Ercolano, Board of Education of Branchburg Township, Somerset County*, Commissioner’s Decision No. 140-00, decided May 1, 2000. Here, as the ALJ notes, respondent’s behavior “amply demonstrates conduct unbecoming an elementary school teacher,” (Initial Decision at 5), which, the Commissioner determines, is undeniably sufficient to warrant dismissal from his tenured teaching position.

Apart from the Board’s demonstration that Charge One has been established, however, the Commissioner finds that this matter has been rendered moot by the State Board of Examiners’ decision on June 10, 2004 to revoke respondent’s certificate and his certificate of eligibility in that he is now *prohibited by law* from continuing his tenured employment with the Board and, indeed, is no longer eligible for employment as a teaching staff member in New Jersey public schools.

Accordingly, the Initial Decision is adopted as clarified herein.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 21, 2004

Date of Mailing: October 21, 2004

* 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.*