

IN THE MATTER OF THE TENURE :  
HEARING OF KIMBERLY GEURDS, : COMMISSIONER OF EDUCATION  
EAST WINDSOR REGIONAL SCHOOL :  
DISTRICT, MERCER COUNTY : DECISION

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SYNOPSIS

The petitioning Board filed tenure charges of conduct unbecoming against respondent Kimberly Geurds – a tenured elementary school teacher – for allegedly engaging in inappropriate conversation in her classroom, including speaking to her students about her own personal situation, discussing matters of a private or sexual nature in class, and using words and phrases that were not appropriate for a teacher in such a setting. The petitioning Board sought revocation of respondent’s tenure and termination of her employment.

The ALJ found that: the Board met its burden to prove by a preponderance of the credible evidence that respondent did engage in inappropriate conduct for a teacher; although respondent’s inappropriate conduct was not of a lurid or prurient nature, she did engage in discussion in the classroom of topics of a private and/or sexual nature which would properly fall under the category of health education rather than the fifth grade curriculum which respondent was responsible for teaching; respondent’s conduct was not proper and her choices as to what subjects or language to use or discuss in the classroom were not justified by the circumstances; respondent now recognizes that if it was necessary to address the actions or comments of students that were not proper, she should have done so either privately, or through referral to proper school personnel to deal with the situation, and/or to advise the child’s parents of the facts and let them deal with their children; respondent’s conduct demonstrated failure to recognize boundaries and the sensitivities of students – especially pre-teenagers – and to respect the prerogatives of parents. The ALJ concluded that, while her conduct was certainly unprofessional, it did not rise to a level that would justify terminating her tenure and career. Accordingly, the ALJ ordered that respondent forfeit 120 days of pay and one year’s salary increment.

Upon independent review of the record, the Commissioner concurred with the ALJ’s findings and adopted the Initial Decision of the OAL as the final decision in this matter. Additionally, to enable respondent to correct her inappropriate behavior, the Commissioner ordered Ms. Geurds to complete coursework in pedagogy addressing: the social and psychological needs of different age and grade levels; the boundaries between a teacher’s instructional jurisdiction and issues properly in the province of parental guidance and control; and classroom demeanor.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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**CORRECTED DECISION**

IN THE MATTER OF THE TENURE :  
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EAST WINDSOR REGIONAL SCHOOL :  
DISTRICT, MERCER COUNTY :  
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: DECISION

The petitioning school district brought charges against tenured teacher Kimberly Geurds, maintaining that her conduct was unbecoming to a sufficient degree to warrant dismissal. No charges of “inefficiency, incapacity, . . . or other just cause” were alleged, pursuant to *N.J.S.A. 18A:6-10*. The first count of the tenure charges alleged several incidents of inappropriate comments and discussions between respondent and her students. The second count alleged improper communications between respondent and various school employees, but petitioner withdrew that count by letter dated October 14, 2009 from petitioner’s counsel to ALJ Jeff S. Masin and respondent’s counsel.

Upon its transmission to the Office of Administrative Law (OAL), the case was initially assigned to Administrative Law Judge (ALJ) Dennis Blake, who presided over the first two hearing days. The case was subsequently reassigned to ALJ Masin, who reviewed the record – including audio recordings of the testimony given on the above-referenced hearing days. ALJ Masin determined that there was “no need for the re-presentation of the testimony of the several witnesses who testified on those hearing dates.” (Letter dated August 25, 2009, from ALJ Masin to counsel for the parties) He was satisfied that the hearing could be “completed without the recalling of such witnesses without any prejudice to the parties.” (*Ibid*). No objections having been articulated by the parties, ALJ Masin presided over a third hearing day

and issued an Initial Decision recommending that Geurds forfeit 120 days of salary and one year's increment.

Because petitioner brought no charge of inefficiency or incapacity against respondent, the ALJ correctly focused on the evidence concerning the alleged unbecoming conduct which, in the instant case, appeared to relate to the alleged "use of certain words, phrases and the discussion of certain topics by Geurds with or within the hearing of her students." (Initial Decision at 15) He noted that the evidence had been "geared to prove that Geurds ha[d] spoken and acted inappropriately, most especially in respect to the discussion of matters mostly related to body parts, sex and words inappropriate to a 5<sup>th</sup> grade, indeed, in some instances, to any classroom perhaps other than in health class." (*Ibid.*)

Certain facts are undisputed. Respondent agrees that she reenacted, for her fifth-graders, an incident that had occurred several years prior, in which she had demonstrated to kindergarten boys – using a hat and a piñata stick – how to urinate into a commode without splattering. According to respondent, this reenactment indirectly resulted from complaints by fifth grade girls that their bathroom was messy. It was additionally, in respondent's view, a reminiscence for the children in her fifth grade class that had been in that kindergarten class. Respondent also agreed that after hearing a couple of fifth-grade boys call each other "douche-bags," she had explained to them – in the presence of the class – what douche-bags are and why they are used. (T3<sup>1</sup> at 100-01) In testifying about these incidents, respondent stated that in retrospect she would have handled them differently, and that her mistakes flowed from the fact that she had just transitioned from teaching kindergarteners to teaching fifth-graders. (T3 at 108-09)

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<sup>1</sup> T3 is the transcript from the third day of hearing on November 17, 2009.

While both sides agree that the urination demonstration and the discussion of douche bags did take place, there are discrepancies between respondent's account of these incidents and the descriptions provided by students. In addition, respondent denies the balance of the allegations against her.

To evaluate the discrepancies, the ALJ examined the sources of the evidence against respondent. Of petitioner's seven witnesses, only two could be regarded as having had first-hand knowledge of what transpired in respondent's classroom, *ie.*, the twelve-year-old students A.L. and J.R. Petitioner presented a parent and four school officials, whose testimony about petitioner's classroom discussions was, however, hearsay and valuable only insofar as it could corroborate direct testimony. Petitioner also presented written notes about respondent's behavior (Petitioner's Exhibit P-8), that were taken during interviews with approximately fifty non-testifying students. While the ALJ recognized that the contents of P-8 are also hearsay, he considered them harmonious enough with the direct testimony of A.L. and J.R. – and with respondent's testimony – to accept as corroborating evidence.<sup>2</sup> (Initial Decision at 17-19)

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<sup>2</sup> P-8 consists of handwritten memorializations of interviews with over 50 students, thirty-seven of which reported nothing about inappropriate discussions by Geurds. Of the fourteen who said they noticed something unusual about Geurds' teaching, half of them only referred to the class in which Geurds recounted how she instructed kindergarten boys in bathroom protocol. Four of those students stated that during that incident Geurds used the word "penis." Of the remaining seven students that recalled respondent mentioning body parts:

**M.Q.** stated that respondent explained body parts after she found some students laughing at a book.

**M.O.** stated that respondent explained the word "pussy" after it was used by a student. He was not troubled by the incident.

**M.G.** stated that respondent corrected other students when they used the word "nuts," and told them that if that body part is injured it can't grow back.

**S.O.** recalled that respondent spoke of girls' body parts and it made him uncomfortable.

**M.P.** said that respondent had used the "V" word and had explained that "it's just girls' private parts." He thought it was ok for respondent to explain it because "some people don't take it serious and they don't know what the words mean."

**N.O.** said that respondent gives explanations of what words mean: "It surprises me what it really means." He related that douche-bag "is something to help a girl freshen up . . . a little more of an adult meaning." He was a little uncomfortable during such discussions. N.O. also related that some students looked at respondent's health books which have pictures of body systems.

**S.Y.** stated that it made her uncomfortable when respondent spoke about body parts – in connection with puberty, childbirth, etc. She was embarrassed "because the boys are looking at us." S.Y. agreed that respondent had spoken to the boys about testicles and called them "balls."

The first student to testify, A.L., recounted the above-mentioned incident in which respondent revisited the way she had instructed kindergarten boys on proper bathroom procedure. (T3 at 23-25) A.L. recalled that respondent had used the word “penis” on that occasion. (T3 at 23) A.L.’s recollection of respondent’s above referenced explanation about douche bags was also part of her testimony. (T3 at 29-31) She stated that respondent used the word “vagina” in the course of that incident. (T3 at 30) It was A.L. that remembered respondent saying “s\_\_t” after breaking a beverage bottle. (T3 at 31-32) She also testified that respondent told boys who had pulled their trousers above their waists that they would “get [their] balls in a bunch.” (T3 at 33)

Of most concern was A.L.’s testimony that – after a student said to another student: “s\_\_k my d\_\_k,” respondent reacted by saying “If you want someone to s\_\_k your c\_\_k, then go home and ask your family to do it for you.” (T3 at 33-34) A.L. also testified that respondent – in reaction to a student using the F-word (T3 at 40) – explained the mechanics of sex. (T3 at 26-27)

J.R. testified about the douche-bag discussion – recalling that respondent had used hand gestures in the course of her explanations (T3 at 51-53) – and about the incident in which respondent allegedly told students that they would get their balls in a bunch. (T3 at 53-54) J.R. also maintained that at the beginning of the school year respondent told the students that she was a single parent and not gay. (T3 at 50-51) As to this latter statement, the Commissioner notes that J.R. was the only one of over fifty interviewed students to so testify. By way of contrast, respondent testified that she had mentioned her single status – and the fact that she did not lead an alternative life style – to parents at Back-to-School night, but not to the students. (T3 at 112-

13) Significantly – in the Commissioner’s view – J.R.’s hearing testimony disclosed that on the morning of the hearing, her mother had quizzed her about her testimony:

Q. Did you go over what it was you were going to say?

A. Yes, but she just asked me if I remember stuff and I would either say yes or no if I remember something.

....

Q. What did she say?

A. She would ask stuff if I remembered, like if she said this or that.

Q. Can you tell us what those things were?

A. Gay, balls, cock, and the other one.

(T3 at 58, emphasis added)

When respondent testified at the hearing she denied explaining the mechanics of sex (T3 at 109), making comments about boys’ “nuts” or “balls” (T3 at 102-03; T3 at 110), telling her class that she is a single parent but not gay (T3 at 112), and, of most concern, responding to a child’s epithet (“s\_\_k my d\_\_k”) by saying “if you want someone to s\_\_k your c\_\_k then go home and ask your family to do it for you.”<sup>3</sup> (T3 at 103; T3 at 111) Respondent also denied using the word “s\_\_t” in class, but conceded that she might have used the word in exclamation when her vitamin water bottle broke – which would have been in between classes, as opposed to during class. (T3 at 109-10)

Focusing on the testimony of A.L., J.R., and respondent, and the contents of Petitioner’s Exhibit P-8, the ALJ concluded that – given respondent’s evident propensity for candid discussions with her students about health, sex, and crude language – it would not be surprising if respondent had, as some of the interviewed students had stated, used the names of body parts in the course of discussing urination technique or the purpose of douche bags, and

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<sup>3</sup> The Commissioner notes that only one student, A.L., alleged that respondent told a male student to go home and ask his family to s\_\_k his c\_\_k. ( T3 at 33-34)

utilized hand gestures while describing douche bag usage.<sup>4</sup> (Initial Decision at 19) Further, in light of respondent's tendency to correct her students' use of vulgarities by explaining the underlying meanings of such words, the ALJ concluded that it was plausible that A.L. reliably reported that respondent had mentioned the mechanics of sex. (*Ibid.*) More specifically, the ALJ accepted the testimony of A.L. that such a discussion was precipitated by respondent hearing a student use the word "f\_\_k."<sup>5</sup> (*Ibid.*)

Thus, the ALJ found, as a matter of fact, that respondent did demonstrate urination technique in her fifth grade classroom, did instruct her class about the purpose of douche bags, did use the words "penis" and "vagina" in the course of those discussions and demonstrations, did "relate something of the mechanics of sex," did on one occasion use the word "s\_\_t" in the classroom upon breaking a bottle, and did on at least one occasion refer to testicles as "nuts" or "balls." (Initial Decision at 19-20) However, the ALJ did not find credible A.L.'s contention that respondent told "a boy that he should go home and have his family perform oral sex." (Initial Decision at 20)

In rejecting the latter allegation, the ALJ explained that while respondent had a clear propensity to "speak freely and explain matters of health and sex to these young and impressionable students, there is in what she has admitted and most of what the students claimed no sense of nastiness, no suggestion of any lurid or prurient element." (Initial Decision at 19) He thus found that while respondent may have reacted to hearing a student say "s\_\_k my d\_\_k," she did not make the crude rejoinder attributed to her by A.L. (*Ibid.*)

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<sup>4</sup> The Commissioner notes that J. R. was the only one of the fifty-plus interviewed students who stated that respondent had demonstrated with hand gestures the use of a douche bag (T3 at 52) and that respondent denied that she performed such a demonstration. (T3 at 101)

<sup>5</sup> The Commissioner notes that A.L. was the only interviewed student to say that, in response to a student using the "F word," respondent explained the mechanics of sex to the class, *i.e.*, that a boy puts his penis in a girl's vagina. (Petitioner's Exhibit P-16; (T3 at 26-28; T3 at 40)

Finally, the ALJ made no findings about J.R.'s assertion that respondent disclosed her marital status and sexual orientation to the students early in the school year. The Commissioner does not regard that particular assertion by J.R. as credible but, in any event, would not regard such a disclosure as rising to the level of "unbecoming conduct."

Ultimately, the ALJ found that respondent's approach to dealing with students' use of vulgarities or handling other incidents relating to matters of health and hygiene was well-intentioned but inappropriate. (Initial Decision at 20) He found that the class discussions described in the evidence before the ALJ were outside the boundaries of the curriculum for which she was responsible, that the language she used was unprofessional and insensitive to her students and their parents, and that she acknowledged same. Consequently, the ALJ concluded that petitioner had proven that respondent had manifested unbecoming conduct. (*Ibid.*)

In addressing the appropriate sanction, the ALJ recommended suspension and increment withholding, not removal, as requested by petitioner. Applying the relevant legal standards articulated in *In re Fulcomer*, 93 N.J. Super. 404, 420-22 (App. Div. 1967) and other cases for determining penalties for unbecoming conduct, the ALJ concluded that respondent is not "a lost cause." (Initial Decision at 21) Contrary to petitioner's assertions, the ALJ found that respondent had acknowledged the inappropriateness of her comments and actions and would likely not repeat them. (Initial Decision at 20) He was persuaded that respondent could continue to serve as an effective teacher. (Initial Decision at 21)

Further, the ALJ contrasted respondent's misguided attempts to capitalize on "teachable moments" with the behavior of the subjects of prior tenure charges who, *inter alia*, cultivated improper familiarity with students, preyed on students, undermined students' morals and endangered students' health and well-being. (*Ibid.*) The catalyst for each of the



inappropriate class discussions in the present case was an incident of student misbehavior which respondent endeavored to correct; nothing in the record suggests that respondent had a venial or immoral agenda.

Ultimately, the ALJ recommended the forfeit of 120 days of salary and one year's increment, concluding that "[s]uch sanction should assure that [respondent] will conduct herself in the future in an appropriate manner, respecting the limits of her role and the sensibilities of her students." (Initial Decision at 22) This recommendation was based upon his determination that the record, overall, painted a picture of imprudent behavior that did not rise to the level of conduct warranting respondent's removal, loss of tenure and significant career damage. (*Ibid.*) After reviewing the record, the Initial Decision, petitioner's exceptions, respondent's reply exceptions, and relevant case law, the Commissioner adopts the ALJ's recommendation.

Petitioner's exceptions urge that the ALJ was correct in finding unbecoming conduct but erred in declining to uphold the penalty of dismissal: the "only sanction that can be justified on the facts of this case is termination of employment." (Petitioner's Exceptions at 35) While conceding that in the past tenured teachers have received lenient treatment for behavior commensurate with respondent's, petitioner contends that respondent did not show the contrition or awareness of her improper conduct that was necessary to avoid the penalty of termination. (Petitioner's Exceptions at 32-33) More specifically, petitioner argues that respondent's denial of some of the students' allegations suggests that her remorse is shallow and insufficient to support a return to work. (Petitioner's Exceptions at 33-34)

Petitioner apparently made these same arguments in the OAL. The ALJ rejected them, concluding that the most likely explanation for the fact that respondent denied some of the facts that he ultimately found, was that she "simply [did] not remember all that she said."

(Initial Decision at 21-22) He felt that respondent was not willfully obfuscating facts because, *inter alia*, what respondent admitted was similar in character to what she did not recollect.

(Initial Decision at 22) Insofar as his opinion on this issue is a credibility determination, the Commissioner may not disturb it unless a review of the record discloses that it is arbitrary, capricious or unreasonable. *D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div. 2004).

The Commissioner finds that the record does not belie the ALJ's credibility determination, factual findings or conclusions of law. The Initial Decision is thus adopted as the final decision in this case and the petition is dismissed. Accordingly, respondent may continue teaching but will forfeit 120 days of salary and one year's increment.

In addition, to help insure that respondent is able to correct the inappropriate behavior discussed *supra*, the Commissioner orders that respondent – before the end of 2011 – complete coursework in pedagogy that addresses: 1) the differences in the social and psychological needs of children of different age and grade levels, 2) the boundaries between a teacher's instructional jurisdiction and issues properly in the province of parental guidance and control, and 3) professional classroom demeanor. The coursework will be subject to reasonable review and approval by petitioner, who may apply to the Commissioner if respondent fails to comply with the above articulated terms.

IT IS SO ORDERED.<sup>6</sup>

COMMISSIONER OF EDUCATION

Date of Decision: August 27, 2010

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<sup>6</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.