

IN THE MATTER OF THE TENURE HEARING :

OF EDITH CRAFT, SCHOOL DISTRICT : COMMISSIONER OF EDUCATION

OF THE TOWNSHIP OF FRANKLIN, : DECISION

SOMERSET COUNTY. :

SYNOPSIS

The petitioning Board filed tenure charges of conduct unbecoming and other just cause against respondent, a tenured special education teacher who has been employed in the district since 2004. The charges were based upon a single incident in November 2010 during which respondent slapped a handicapped student across his face with an open hand. Respondent contends that the slap was a reflexive action which occurred after the student slapped her, that she was remorseful and felt that she did not handle the situation correctly, and that her teaching record prior to this single incident was unblemished. The petitioning Board sought revocation of respondent's tenure and termination of her employment.

The ALJ found, *inter alia*, that: on November 1, 2010, a special education student in respondent's class was agitated and acting out throughout the morning, kicking and hitting at another student and at respondent despite efforts to redirect him; the child finally slapped respondent in the face; respondent then struck the student after he struck her; respondent's action was reflexive after she was hit in the face; respondent was not punishing the child for any misbehavior and was immediately remorseful for her conduct; while respondent's conduct was not acceptable behavior for a teacher, there was evidence of provocation in the form of repeated slaps from the student; respondent did not inflict corporal punishment on the student, and he was not injured or visibly upset by the incident. However, the evidence supports the charges against respondent, and she did engage in conduct unbecoming a teacher. Accordingly, the ALJ determined that under the circumstances, dismissal from employment would be excessive and the appropriate penalty for respondent's unbecoming conduct is the loss of employment and adjustment increases for one year as well as the forfeiture of the 120 days of pay withheld following the certification of tenure charges. The ALJ ordered the Board to reinstate petitioner to her tenured position.

Upon independent review of the record, the Commissioner concurred with the ALJ that respondent is guilty of unbecoming conduct, but modified the penalty to impress upon respondent the seriousness of her errors in judgment displayed in this matter. Accordingly, respondent was reinstated, but will be suspended for an additional four months without pay in addition to the penalty recommended by the ALJ.

<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>

OAL DKT. NO. EDU 1751-11
AGENCY DKT NO. 24-2/11

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the respondent and the Board of Education (Board).

This case involves tenure charges brought by the Board against the respondent Edith Craft, a special education teacher in the Franklin Township School District. The Board charged the respondent with unbecoming conduct based on one incident during which the respondent slapped a third-grade student in the face. The Administrative Law Judge (“ALJ”) found that the respondent was guilty of unbecoming conduct, and recommended that the respondent receive a 120 day suspension without pay and lose one year’s salary increment.

The respondent takes exception to the ALJ’s determination that the appropriate penalty is the loss of one year’s increment, and the loss of 120 days’ salary. Respondent maintains that the penalty recommended by the ALJ is excessive and that a lesser penalty is appropriate in light of the relevant case law. In her exceptions, respondent cites cases where she believes the teacher’s conduct was more egregious yet they suffered lesser penalties. The respondent also contends that her penalty should be modified to take into account the reflexive

nature of her action, the student's provocation, the fact that the student was not harmed, the respondent's remorse, and her unblemished teaching record.

In its exceptions, the Board urges the Commissioner to adopt the ALJ's determination that the respondent engaged in conduct unbecoming a teaching staff member, but takes exception to the penalty recommended by the ALJ. The Board maintains that the respondent's unbecoming conduct warrants the dismissal of respondent from her tenured teaching position. The Board takes exception to the ALJ's determination that the respondent's act of slapping the student was "reflexive" after the student had slapped her, pointing out the testimony of Ms. Wilson, a staff member who observed the conduct. Mr. Wilson testified that after the respondent slapped the student, she stated to him "Now you know how that feels," which the Board contends suggests more than an unthinking reaction.

The Board also argues that the ALJ erroneously based her recommendation on the fact that there was provocation by the student. In its exceptions, the Board stresses that the testimonial and documentary evidence established that although the student had repeatedly slapped the respondent from the start of the school day, there was a cooling off period where the student was behaving before he again slapped the respondent – at which time she slapped him back. As a result, the Board argues that the recommended penalty should be modified to provide for termination of respondent's employment with the Franklin Township School District.

Upon a comprehensive review of the record in this matter, which included the transcript of the hearing conducted at the OAL on May 9, 2011, the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct. The Commissioner finds the ALJ's conclusions as to the truth of the Board's allegations and the characterization of respondent's behavior as unbecoming conduct to be fully supported by the

record and consistent with applicable law. Certainly under circumstances where a teacher slaps a student in the face, when force was not necessary under *N.J.S.A. 18A:6-1(1)-(4)*¹, there is very little scrutiny required to conclude that the teacher's inexcusable behavior amounts to unbecoming conduct.

The more complex aspect of this case includes the analysis required to determine the appropriate penalty to be imposed on the respondent. The Commissioner is mindful that factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher's prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring. *In re Hearing of Ostergren, Franklin School District*, 1966 *S.L.D.* 185; *In re Hearing of Kittell, Little Silver School District*, 1972 *S.L.D.* 535, 541; *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967). It is also well recognized that by virtue of the unique position they occupy, educators must be held to an enhanced standard of behavior.

The Commissioner is in accord with the ALJ that based on all of the circumstances and considerations existing in this matter, removal of respondent from her tenured position is an unduly harsh penalty. Notably, there is no indication that her conduct was "premeditated, cruel or vicious, or done with the intent to punish." See, *In re Fulcomer, supra*, 93 *N.J. Super.* at 421. Additional mitigating factors that go against dismissal include the fact that this was a single isolated incident; there is no evidence that the respondent has ever been the subject of any discipline during her seven years with the district; the evidence presented established that the student first hit the respondent and she reacted to that action; and the student

¹ Pursuant to *N.J.S.A. 18A:6-1*, reasonable force may only be used when "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.

was not injured. Further, despite her lapse in judgment, the evidence does not establish that the respondent is unfit to discharge the duties and functions of her position as a teacher. The respondent has acknowledged that she did not handle the situation properly and is remorseful for her behavior.

Although dismissal in this case is not warranted for the reasons discussed above, the Commissioner recognizes that the charges in this matter are serious in nature, and finds that the penalty recommended by the ALJ must be modified to reflect the fact that the inexcusable use of physical force in the school environment will not be tolerated.² Moreover, the Commissioner finds the respondent's behavior particularly troubling under the circumstances in this case because her actions essentially communicated to an eight-year-old special education student – with documented behavioral problems – that hitting is an appropriate response to frustration. It is without question “that teachers carry a heavy responsibility by their actions and comments in setting examples for the pupils with whom they have contact.” *In the Matter of the Tenure Hearing of Blasko, School District of the Township of Cherry Hill*, 1980 S.L.D. 987, 1003. Respondent's intolerable conduct and unprofessional behavior validated the very impulses and violence that the student has difficulty controlling. That type of negative reinforcement can serve to thwart any progress made by the teaching staff in their ongoing effort to help the student conquer the behavior difficulties that he struggles with on a daily basis.

Therefore, the Commissioner finds and concludes that the loss of respondent's employment and adjustment increments for 2011-2012 and the 120 days salary withheld

² There are a series of cases which are routinely cited by litigants involving incidents of physical contact between a teacher and a student. Although the penalties given in those cases can offer some insight into appropriate penalties to be imposed in future matters, it is important to recognize that cases involving physical force are extremely fact sensitive and require a case-by-case analysis. Moreover, conduct on the part of teaching staff members that occurred several decades ago may not be consistent with the type of behavior that will be tolerated in this day and age. The adherence to precedents in administrative proceedings is “subject to the basic notion that experience is a teacher and not a jailer.” *In re Masiello*, 25 N.J. 590, 598-599 (1958) (citations omitted).

pursuant to *N.J.S.A.* 18A:6-14 following the certification of tenure charges, plus an additional four months suspension without pay is a sufficient penalty to impress upon respondent the seriousness of her errors in judgment displayed in this matter. Accordingly, the Initial Decision of the OAL – as modified with respect to the penalty – is adopted as final decision in this matter.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2011

Date of Mailing: September 6, 2011

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)