

NEW YORK STATE EDUCATION DEPARTMENT

In the Matter of the Disciplinary Charges *
Proffered by *

THE NEW YORK CITY DEPARTMENT *
OF EDUCATION *

Re: 15,437

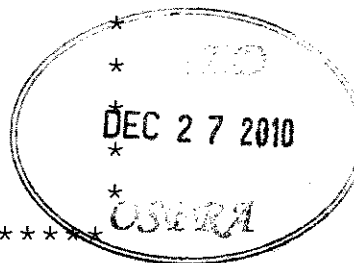
Department *

against *

PHILIP NOBILE *

Respondent *

Pursuant to Education Law Sec. 3020-a *



OPINION AND AWARD OF HEARING
OFFICER ROGER P. KAPLAN, ESQ.

APPEARANCES:

FOR THE DEPARTMENT: Michael Best, Esq.
General Counsel to the Chancellor
Julianne Newman, Esq.
Of Counsel

FOR RESPONDENT: Philip Nobile, Pro Se

Background

Pursuant to Section 3020-a of the New York State Education Law, the Department of Education of the City School District of New York (Department) brought charges against tenured teacher Philip Nobile (Respondent). The charges alleged that Respondent engaged in conduct unbecoming his profession, neglect of duty, and violation of Chancellor's Regulations A-830 and A-420. The Department sought Nobile's discharge from employment.

Hearing days were conducted before the undersigned on October 28, 29, November 4, 5, 17, 18, 19, and 30 2010, in New York City. The hearing days were transcribed. The parties had a full and fair opportunity to examine and cross-examine witnesses as well as present other evidence in support of their respective positions. The Respondent submitted a written closing argument on November 30, 2010. The Department made a verbal closing argument in a transcribed conference call on November 30, 2010. The record was closed upon the undersigned's receipt of the transcript of the conference call on approximately December 7, 2010.

The Letter of Charges and Specifications

Philip Nobile (hereinafter referred to as "Respondent"), under File # 785174, is a tenured teacher formerly assigned to Cobble Hill School of American Studies, District 15, in Brooklyn. During the 2006-2007 and 2009-2010 school years, Respondent engaged in corporal punishment, misconduct and conduct unbecoming a teacher.

In Particular:

Specification 1: On or about May 10, 2007, Respondent:

(a) Grabbed Student A by the arm.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Specification 3: On or about October 21, 2009, while at the Reassignment Center, Respondent stated words to the effect of:

(a) I will control those Negroes at that table (referring to a table containing African-Americans).

The Foregoing Constitutes:

- Just cause for disciplinary action under Education Law Section 3020-a;
- Conduct unbecoming Respondent's position or conduct prejudicial to the good order, efficiency or discipline of the service;
- Substantial cause rendering Respondent unfit to perform properly his obligations to the service;
- Neglect of duty;
- Violation of Chancellor's Regulation A-830;
- Violation of Chancellor's Regulation A-420; and
- Just cause for termination.

Facts

The parties agreed that Mr. Philip Nobile is a tenured teacher who has been employed by the New York City Department of Education for ten (10) years. He was working as a history teacher assigned to the Cobble Hill School of American Studies (Cobble Hill) at the time of the alleged conduct with which he was charged in Specifications 1 and 2. He was assigned to the Reassignment Center (Center) at the time of the alleged misconduct charged in Specification 3.

On May 10, 2007, some students in Nobile's history class were displeased with the manner in which they were allegedly treated by Nobile. Student C, a student in the history class, prepared a note/petition (note)

which she passed around the classroom. When the note reached Student A, another student in the class, Nobile attempted to take possession of it.

Nobile testified that the passing of the note around the classroom caused some disturbance. When the note reached Student A, he asked Student A to give it to him. According to Nobile, Student C screamed, charged across the room and said repeatedly "don't give it to him." Nobile testified that in order to diffuse the situation, he placed his hand above Student A's left elbow and "levered" it forward toward the door. Student A stumbled and Nobile immediately let go of Student A's arm. Several students started to yell "you pushed him."

Nobile stated that his original intent was to get Student A out of the room and away from Student C. He viewed Student C as a potentially violent student. He testified that he was fearful at the beginning of the incident. Nobile had previously made several referrals about Student C's conduct in his class, including at least one (1) verbal death threat that Student C directed at Nobile.

Nobile testified that he continued with his hand on Student A's arm even after the potential threat posed by Student C was over. The potential threat ceased when Student A gave the note to Student C.

According to Student A, Nobile asked him for the

note, but he refused to give it to him. Student A testified that he did not like the fact that Nobile was upset, angry and yelling at him. When Student A refused to give him the note, Nobile told him to leave the classroom. Student A testified that he took his time to "piss off" Nobile. He stated that Nobile grabbed his arm and shoved him towards the door. Student A testified that Nobile did not throw him towards the door, but he was caught off balance and stumbled. When he stumbled, Nobile let go of his arm. He did not fall, and he was not hurt. Student A "assumed" he gave the note to Student C sometime during the incident.

Student C testified that she told Student A not to give the note to Nobile. When Nobile tried to take it away from Student A, she stated she arose from her seat and went to Student A to retrieve the note. Student A gave her the note. She saw Nobile grab Student A by the arm and push him out the door.

Student G, another student in Nobile's history class, testified that Student C came across the classroom yelling "don't give it [the note] to him." Student G characterized Student C's trip across the classroom in various ways, such as charging, running, walking, and finally as walking quickly. She saw Student A give the note to Student C.

Security guards removed Student C, Student A and

another female student from the Nobile's classroom. Terrance Crosby, a Dean at Cobble Hill, became involved with the aftermath of the incident. There was conflicting testimony from Crosby and Nobile as to what happened once Crosby became involved. Crosby testified that he lost statements provided by Student C, Student A and the other removed student, while Nobile testified that Crosby tore up the statements and discarded them, after Student A told him he did not want to pursue a complaint.

Student A testified that he did not want to pursue a complaint because the incident was not a "big deal" to him. Student A stated that Mr. Kenneth Cuthbert, the Principal at Cobble Hill at the time of the incident, told him it would be best if he did file a complaint so something similar would not happen to another student. Student A then filed a complaint against Nobile.

[REDACTED]

Pages 8-11
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[REDACTED]

Nobile was sent to the Center after the May 29, 2007, encounter with Student D. He was at the Center on October 21, 2009, when he allegedly said words to the effect, I will control the Negroes at that table. Nobile's words were relied upon by the Department in Specification 3. Nobile acknowledged saying words to that effect, but denied that what he said was a racial remark or otherwise inappropriate.

The Center was a large room approximately the size of a football field. It contained 40 to 45 tables where four (4) to six (6) people sat at each table during the course of a work day. The population of the Center was approximately 65 percent African-American. Nobile sat at a table near another table occupied by several African-Americans. Nobile testified that prior to October 21, 2009, he had asked several of the African-Americans sitting at a particular table to hold down their noise level.

Mr. Angel Luis Crespo was the Supervisor in charge of the Center from 2008 until it closed in June 2010. He testified that Nobile complained to him about the

noise in the Center. Crespo testified that Ms. Barbara Garner Stoney and Mr. Michael Sergeant complained to him about Nobile coming to their table and telling them to keep down their noise level. Stoney testified that she and Nobile argued over Nobile complaining about her being too loud. Sergeant did not testify.

Crespo testified that the word Negro was used frequently in the Center by the African-Americans in the room. He said that its use was inappropriate, if someone complained. The only complaint he received about the use of the word Negro during his two (2) years as the Supervisor at the Center was the complaint he received concerning Nobile's use of the word.

On October 21, 2009, Mr. Richard Walker came to Crespo and complained that Nobile had said words to the effect, I will control the Negroes at that table. Shortly after Walker's complaint, Sergeant also came to him to complain about Nobile's statement. Crespo contacted his supervisor, who told him to gather statements. He received statements from Walker, Sergeant, Stoney, Ms. Marjorie Felix and Ms. Geneva Aiken. All five (5) people who provided statements to Crespo were Department employees assigned to the Center who sat at the same table. All five (5) employees are African-American. Crespo testified that he sent the statements to the Legal Department.

Crespo testified that Stoney told him that Walker

made a statement to Nobile using the word Negro, prior to Nobile making his statement. Stoney did not tell him the sentence in which Walker used the word Negro, and she did not complain about Walker's use of the word. He asked the others if they had heard Walker use the word Negro, but they told him they had not heard Walker use that word.

Felix testified that Nobile had argued with Stoney and Sergeant about allegedly being too loud. She heard Nobile state in a loud voice that he wanted to control the Negroes at that table, pointing to her table. She did not hear Walker say anything to Nobile. Felix stated that she was offended and upset because she is a "colored lady." She said that the use of the word Negro was an "insult." The word "control" reminded her of slavery and upset her. Felix did not complain initially, but wrote a statement when requested to do so by Crespo. She testified that she did not use the word Negro and had not heard it used at the Center.

Stoney testified that she was "shocked" and "appalled" at the use of the words Negroes and control. She viewed the statement as racist. Stoney stated that she did not recall telling Crespo about Walker using the word Negroes first. She denied hearing Walker use the word Negroes first.

Sergeant provided a written statement in which he stated that he heard Nobile tell Walker he was going to

control the Negroes at that table. He said everyone at the table acted in disbelief. Sergeant called the comment "unacceptable and racist."

Walker provided a written statement wherein he stated that Nobile made the comment, I will control those Negroes at that table. Walker said he was "shocked." When Walker testified he was asked if he had used the Negro word first. Walker responded, "...from my recollection, no. I do not recall saying that." Walker later testified that he did not recall talking to Nobile before Nobile used the word Negroes. He then stated that he did not use the word Negroes before Nobile. Walker testified that he would never use the words Negroes or nigger, except to express his displeasure with the use of those words. Walker testified that he was "shocked" and angered when Nobile used the word Negroes. Walker left and went to complain to Crespo.

Aiken is an African-American who testified that she was at the same table with the other African-Americans who testified and gave written statements about what happened on October 21, 2009. She testified that racial language such as Negro and nigger was always a "joke" at her table. Aiken stated that Walker called her a nigger and occasionally told her to stop acting like a nigger. She did not find it offensive when those words were used by Walker at her table.

Mr. Tatek Hewart is an African-American who testified that he heard Walker use racial epithets at the Center. He stated he heard Walker "profusely use the word nigger" at the Center.

Aiken stated that she heard Walker say to Nobile as Nobile was walking towards the back of the room, "Yo Phil [while Walker pointed at her table] why don't you tell those Negroes over there to be quiet." Aiken testified that Walker said to the table before he called out to Nobile, "watch this." Aiken said Nobile made his statement in response to what Walker said to him. When Walker called Nobile a racist, Nobile stated I was only responding to you. According to Aiken, Walker wanted her to help get Nobile out of the Center.

Ms. Judith Timmons is another African-American who testified that she heard Walker use the word Negroes first. She was not at the same table as the others, but was nearby. She thought Walker was joking when he asked Nobile if he was going to tell those Negroes over there to be quiet. Timmons testified that the table was "joyful" when Nobile responded as he did. The people at the table then joined Walker in saying that Nobile acted wrongly.

The Department has an Office of Equal Opportunity. Mr. William Brutin has been an EEO Officer for 14 years. He is charged with investigating complaints of violations of Chancellor's Regulation A-830 (A-830).

A-830 addresses allegations of violations of civil rights, including racial discrimination.

Brutin reviewed the written statements collected by Crespo. He testified that he did not interview the people who provided the statements. He did interview Nobile. Nobile acknowledged making the statement about controlling Negroes. Nobile told him he was "baited" by Walker into using those words. Nobile told him the names of others who Nobile claimed heard Walker use the words first. Brutin spoke to Aiken and Ms. Yvonne Challom, both of whom told him that Walker used the words first. Brutin testified that Walker's use of the words first was of no importance to him because no one complained about Walker's use. Brutin stated that Nobile's use of the word Negroes is the only time he is aware of a case where the use of the word was the basis for substantiating a complaint of racial discrimination.

Brutin concluded that Nobile violated A-830 because others were offended by what he said. Brutin concluded that the use of the word Negroes by Nobile was racial. He equated the use of the word Negroes to an allegation of racial discrimination. He substantiated a violation of A-830 because others were "reasonably" offended.

Nobile testified that he used the words "Negroes" and "control" only in response to what Walker said to him in a joking manner. When Walker called him a

racist, he told Walker I was just repeating what you said. Nobile testified that he believes Walker and the others were not genuinely offended, but were out to get him removed from the Center because they were tired of him asking them to be quiet.

Nobile testified that he is a ten (10) year employee with a clean disciplinary record prior to the incidents addressed herein. He testified that he has a long record on civil rights, dating back to driving a car for Martin Luther King, Jr. in the 1960s. He stated that he is not a racist.

Positions of the Parties

Specification 1

The Department argued that it needed only to prove by a preponderance of the evidence that Nobile grabbed Student A by the arm and pushed him towards the door, and that such conduct was an act of corporal punishment in violation of Chancellor's Regulation A-420 (A-420). Nobile acknowledged placing his hand on Student A's arm and that he "levered" it forward toward the door. The Department contended that Nobile was angry and upset, and acted with the intent to discipline and punish Student A for his admittedly insubordinate behavior. According to the Department, Nobile's use of physical force did not fall within any of the exceptions in A-

420. The Department maintained that Student C did not charge towards Nobile and Student A, therefore she was not a threat to either. It claimed that Nobile had other means available to him to deal with the situation, especially since his classroom was directly across the hall from Cuthbert's office. The Department asserted that Nobile's conduct rose to the level of corporal punishment because he was angry and upset when he grabbed and pushed Student A towards the door.

Nobile argued that his conduct was at most inappropriate touching, not corporal punishment. He pointed to Student A's initial reluctance to file a complaint, and Student A's testimony that it was not a big deal to him. He also pointed to the fact that OSI initially sent the case back to Cuthbert for handling.

Nobile argued that he did not push Student A. It only looked like a push because Student A stumbled.

Nobile protested that Boyles was biased against him. He provided a recent court decision in which Boyles' investigation in that case was allegedly found deficient by the judge.

Nobile disputed that his conduct was corporal punishment. He argued that he grabbed Student A's arm and escorted him towards the door to quell a disruptive classroom. He stated he had no intent to discipline Student A by grabbing his arm and escorting him towards the door.

Specification 2

The Department argued that it needed only to prove by a preponderance of the evidence that Nobile grabbed Student D by the arm and pushed him into the wall, and that such conduct was an act of corporal punishment in violation of A-420. The Department relied heavily upon the testimony of Williams. It argued that Williams was a credible witness who saw Nobile grab Student D and push him into the wall.

It noted that Medina and Joseph, when called to testify by Nobile, failed to testify that the incident did not occur. The Department contended that Sanchez was not a credible witness because his testimony that he saw Student D throughout the altercation conflicted with what he had told Boyles.

The Department discounted any motivation by Student D or Williams to fabricate the incident. It asserted that the charge filed by Nobile against Student D immediately after the fight in the hall was never substantiated, therefore he had no reason to lie. It contended that the verbal abuse charge filed by Williams against Nobile in 2005¹ was not a credible reason for her to lie about the incident in 2007.

Nobile denied that the incident described by Williams and Student D occurred. He denied that he

¹ The evidence established that the charge was made by Williams in December 2006.

grabbed Student D and pushed him into the wall. He noted that Medina, Joseph and Sanchez did not see him grab and push Student D into the wall, even though they were all present when the incident allegedly occurred.

He asserted that Boyles did not conduct an unbiased investigation or prepare an unbiased report. Nobile pointed out alleged discrepancies between what Boyles recorded in his handwritten notes concerning what Student D and Sanchez told him, and what he placed in his report.

Nobile protested that Student D did not testify at the hearing. He noted that Student D is an emotionally disturbed boy. He maintained that Williams was out to get him because of the recent earlier complaint of verbal abuse she filed against him concerning her own son. He claimed that her testimony was unbelievable, especially in light of the note she wrote wherein she stated only that Student D told her he was grabbed by Nobile.

Specification 3

The Department argued that it only had to prove that Nobile made the statement, I will control those Negroes at that table. It pointed out that Nobile and all the witnesses agreed that he did make the statement.

The Department maintained that Nobile's statement

violated A-830 because it offended others. It contended that even if Walker used the words first and in a joking way, the joke was between Nobile and Walker. Nobile's response offended others at the table who were not participants in the joke. The Department claimed that a reasonable person standard applied, and that the others at the table were genuinely and reasonably offended by Nobile's statement.

The Department contended that Walker's possible use of the words first is of no import to Nobile's case. Nobile could have and should have handled the situation in a manner that did not include repeating the words.

The Department noted that this case is not about whether Nobile is a bigot or a racist. It is about whether on the day in question, he made a statement that offended others in the workplace.

Nobile acknowledged making the statement, I will control the Negroes at this table. He contended that the use of the word Negroes is not racist. He noted a number of times and places where the use of the word Negroes is still in use, apparently without controversy. He also maintained that he is not unaware of how the word can be used pejoratively. He protested that the Department ignored the context within which he used the words attributed to and acknowledged by him. He argued that when viewed in context, his statement was not racist or even inappropriate.

Nobile questioned the veracity of Walker, Stoney, Sergeant and Felix. He believes Walker baited him into making the statement in an effort to have him removed from the Center because of his ongoing efforts to quiet the table where Walker and the others sat. He questioned whether Walker and the others were in fact shocked or offended by his statement.

Opinion

After carefully reviewing all the record evidence, especially the testimony at the hearing, and the arguments made in the closing summations, I make the following findings:

Specification 1

Nobile touched and held Student A on the arm in an effort to move him towards the classroom door. Whether the touching is characterized as grabbing or placing of a hand on the arm, is of little importance to the outcome. Similarly, whether Nobile escorted, leveraged, walked or otherwise compelled Student D towards the classroom door is of little importance in this case to the outcome.

Nobile did not have a legitimate reason to use physical force on Student A. Nobile testified that he was initially fearful of Student C. However, he

acknowledged that his fear dissipated once Student C retrieved the note from Student A. Nobile testified that he continued with his initial decision to remove Student A from the classroom, even after the perceived threat from Student C no longer existed. No matter how Nobile's touching of Student A's arm is characterized, it was an unauthorized use of physical force.

The more difficult question is whether the unauthorized use of physical force was properly treated by the Department as corporal punishment, instead of as inappropriate physical contact. A-420 incorporates a Regulation of the Commissioner that defines corporal punishment as "any act of physical force upon a pupil for the purpose of punishing that pupil." It then states that the term shall not mean the use of reasonable physical force under certain enumerated circumstances. Some of the exceptions include the use of reasonable physical force to protect oneself, another teacher or a pupil from physical injury. Finally, A-420 notes that an employee can be disciplined for inappropriate conduct that is not otherwise in violation of A-420.

The Department is free to define corporal punishment in any reasonable manner it chooses. It is not free to define corporal punishment in the manner published in A-420, only to ignore the clear meaning of its own term. Corporal punishment is defined as the

use of physical force for the purpose of punishing the pupil. The Department argued that Nobile was angry and upset when he grabbed and pushed Student A towards the door. It relied upon Nobile being angry and upset as evidence that Nobile was punishing Student A by grabbing and pushing him towards the classroom door. I disagree.

There is no evidence that Nobile intended to or did in fact punish Student A by physically moving him towards the classroom door. It is clear Nobile's intent was to remove a student who was at least partially responsible for the disruption going on in his classroom. There is little doubt that the classroom had been disrupted by Students A and C, as well as by Nobile's own handling of the situation. Nobile's intent was to remove at least one cause of the disruption, but not to punish or discipline him.

In the absence of concluding that Nobile's actions were done for the purpose of punishing Student A, it follows that Nobile did not violate A-420 by imposing corporal punishment upon Student A.

The above conclusion does not mean that Nobile acted properly in the way he handled the situation with Student A. Student A was insubordinate. Nobile had other options available to him to handle the situation. There was no legitimate reason for Nobile to grab Student A to cause him to move towards the classroom

door with the intention of removing him from the classroom. I find that Nobile grabbed Student A, but did not push him. Nobile's actions were clearly inappropriate and deserving of discipline.

Specification 1 (a) is sustained;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Pages 27-30
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[REDACTED]

Specification 3

Nobile acknowledged saying words to the effect I am going to control the Negroes at that table. That is the only thing concerning Specification 3 that the parties agreed upon.

The Department concluded that the use of the word Negroes was the equivalent of using a racial epithet. Nobile argued that the word Negroes, while perhaps dated, is still a legitimate non-derogatory word. The Department showed little interest in considering the context in which Nobile used the word Negroes. Nobile protested that his use of the word had to be considered in context. When context is considered, Nobile contended it was even clearer that his use of the word Negroes was not a racial epithet.

Brutin was responsible for investigating the complaints filed by Walker, Sergeant, Stoney and Felix.

He was furnished statements prepared by them at the request of Crespo. He did not talk to them during the course of his investigation. Had he done so he would have had an opportunity to test their credibility and perhaps learned more about what happened.

Brutin did interview Nobile. Nobile acknowledged saying words to the effect I am going to control the Negroes at that table. Nobile told Brutin he was baited by Walker into making the statement. He also told Brutin that his statement was merely a restatement of what Walker had first said to him. Brutin interviewed Aiken and Challom at Nobile's request. They told Brutin that they heard Walker make the statement first. Walker was the first to file a complaint and a critical witness. It is hard to understand Brutin's failure to interview Walker, especially after what Nobile, Aiken and Challom told him.

Brutin testified that Walker's possible use of the word Negroes was not an issue for him because no one complained about Walker. Brutin believed that using the word Negroes was using a racial epithet. He concluded that Nobile violated A-830 because he used a racial epithet and people were offended. He maintained that had people not been offended, Nobile would not have been in violation of A-830.

There was credible testimony that the use of the

words Negro and even nigger were fairly commonplace at the Center. Crespo testified that it was inappropriate for both African-Americans and others to use the word Negro. He was the Supervisor in charge of the Center. If he believed it was inappropriate to use the word Negro at the Center, why did he not do something to stop its use?

Brutin testified that this is the only case in his 14 years as an EEO investigator that he investigated a case where the complaint involved the use of the word Negroes. I think the reason for that is because the word Negroes is not generally considered a racial epithet. Nobile pointed out several instances where the word is still used and accepted in general, but also by African-Americans in particular.

The Department's rationale for accepting Brutin's conclusion that the word Negroes was in effect a per se racial epithet and in not considering the context in which the word was used by Nobile is unconvincing. The Supreme Court of the United States in Ash v. Tyson Foods, 546 U.S. 454 (2006), held that referring to African-American employees as "boy" must be considered in light of the context, tone, inflection and custom under which the statement was made. That case is instructive here. Nobile's use of the word Negroes should have been considered by the Department in the context within which it was made.

Walker vacillated between not recalling whether he made the statement first to denying that he made the statement. Stoney also vacillated between not recalling whether she told Crespo that Walker made the statement first to testifying that Walker did not make the statement first. Crespo testified that Stoney told him that she heard Walker make the statement first. Aiken and Timmons both testified that they heard Walker make the statement first to Nobile. I find that Walker did make the statement first to Nobile.

The fact that Nobile was responding to Walker's statement further undermines the Department's position that the use of the word Negroes was racial. The word was in fairly widespread use at the Center, and apparently condoned or at least accepted by the Supervisor in charge, as evidenced by his failure to do anything to stop its use. Nobile merely reacted to Walker's statement by repeating what Walker said to him.

The determination of whether words are in violation of A-830 cannot be dependent almost solely on the reaction of others to those words. If words are condoned or suffered in the workplace through fairly common acceptance without complaint, claims of negative reactions to their subsequent use by an individual in the workplace become suspect. The reasonable man standard advocated by the Department should be applied

in context.

There was some evidence that Walker set up Nobile and that some of the other occupants of the table were assisting Walker in trying to get Nobile removed from the Center. Aiken sat at the table and testified that Walker told the people at the table "watch this" before he called out to Nobile and made the statement first. Sergeant and Stoney were upset with Nobile for the times Nobile continued to ask them to be quiet. They felt harassed and complained about Nobile repeatedly asking them to be quiet.

While some of the people at the table may not have been as shocked and upset as they claimed by Nobile's statement, Nobile himself recognized that at least some of the people at the table were in fact upset by what they heard him say. Some of them did not know he was responding to Walker. His statement was heard by people at other tables.

Nobile did not have to repeat Walker's statement. He chose to do so. While the statement did not contain a racial epithet, that does not mean it was an appropriate statement to make in the workplace. Nobile was an employee just like the other people in the Center. He was not in a position of authority. He had no right to control any group of employees. He also did not have the right to announce in a loud voice his intention to control the employees at any table.

I find that Nobile made the statement attributed to and acknowledged by him. I find that his use of the word Negroes was not a racial epithet in violation of A-830. However, I find that his statement was an inappropriate statement in the workplace.

Specification 3 is sustained.

Penalty

The Respondent urged the undersigned to return him to the classroom. He suggested the proper discipline for his acknowledged inappropriate touching of Student A is a reprimand. He asserted that the other Specifications were not proven.

The Department maintained that all of the Specifications should be sustained and that termination is the only appropriate penalty.

[REDACTED]

[REDACTED] I sustained Specification 1 (a) and Specification 3, but did not agree with the Department that the sustained conduct involved corporal punishment or a violation of A-830. Therefore, Nobile engaged in misconduct serious enough to warrant discipline, but not termination.

Nobile is a ten (10) year veteran teacher with a record of no prior discipline. His testimony at the hearing and his position throughout this matter is of

some concern, since he apparently is still unable to recognize that some of his conduct was unacceptable. His use of physical force on Student A was totally unacceptable. That is so even if Student A thought it was no big deal. Nevertheless, his grabbing of Student A was inappropriate, but it did not rise to the level of corporal punishment or an assault. Hopefully this experience has taught him to keep his hands off students. The penalty imposed should not be considered a slap on the wrist, as teachers are clearly prohibited from touching students, especially under the circumstances present in this case. I have decided that the appropriate penalty in this case is a fine of \$10,000. It shall be payable over a period of 18 months in equal installments to be deducted from Nobile's paycheck.

Award

1. The Department proved by preponderant evidence Specification 1 (a), except that the proven conduct amounted to inappropriate touching, rather than corporal punishment;
2. The Department did not prove Specification 1 (b) and Specification 2. Those Specifications are dismissed.
3. The Department proved by preponderant evidence

Specification 3, except that the proven conduct was an inappropriate statement, but not a violation of A-830;

4. For the sustained violations, the Respondent shall pay a fine of \$10,000 payable over a period of 18 months in equal installments deducted from his paycheck.

DATED: **DEC 21 2010**


Roger P. Kaplan, Esq.
Hearing Officer

Alexandria, Virginia