

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE LICENSES OF : STATE BOARD OF EXAMINERS
FRANK ROBERTS : ORDER OF REVOCATON
_____ : DOCKET NO. 449-05/97-127

At its meeting of May 15, 1997, the State Board of Examiners reviewed a Commissioner of Education Decision dated February 22, 1994 captioned In the Matter of the Tenure Hearing of Frank Roberts, School District of the City of Trenton, Mercer County, 94 N.J.A.R. 2d (EDU) 284. The decision found Frank Roberts, who currently holds a Teacher of Carpentry, a Secondary School Teacher of Industrial Arts and a Principal/Supervisor license, guilty of conduct unbecoming a teaching staff member. The Board charged that while employed as a tenured teacher in the district, Respondent had, during the period from November 1991 through January 1992, "participated and allowed classroom discussion with and among six (6) female students of: (1) the details of his sex life with his wife, (2) his students' sexual activity, (3) his opinion on oral sex, (4) the physical attributes of a female student who was absent, and (5) his being proposition by drug addicts ('crackheads') to engage in sexual activity for monetary compensation." (*Id.* at 285 quoting Statement of Tenure Charges). The Commissioner of Education's Decision dismissed Respondent from his tenured employment with the Trenton School District and ordered that the matter be transmitted to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6(a)1 for its consideration.

The State Board of Education affirmed the Commissioner's Decision (August 3, 1994), which was affirmed by the Appellate Division of the Superior Court, App. Div Dkt. No. A-212-94T3 (March 27, 1996).

Pursuant to its authority under N.J.A.C. 6:11-3.6, the State Board of Examiners voted at the meeting of May 15, 1997 to issue Respondent an Order to Show Cause based on the aforesaid Commissioner's Decision removing Respondent from his tenured position. The Order was mailed to Respondent by regular and certified mail on July 25, 1997. On August 11, 1997 an Answer to the Order to Show Cause was received from Richard A. Friedman, Esq. on behalf of his client Frank Roberts.

Respondent's Answer to the Order to Show Cause denies that he committed the conduct alleged in the tenure charges. While he admits that the Administrative Law Judge (ALJ) decided the matter adversely to him, he points out that neither the ALJ nor the Commissioner specifically found that he made any particular statements which were alleged in the tenure charges and further points out that the ALJ observed that the students' allegations could well be false. Respondent denies that suspension or revocation of his licensure is warranted and in this regard observes that the Appellate Division decision made no specific findings of particular acts or omissions by Respondent, and even suggested that the penalty of revocation of tenure may have been too harsh. Respondent contends further that numerous mitigating circumstances militate against suspension or revocation of his licensure because:

- of the circumstances which gave rise to the tenure charges which prevailed in Respondent's school, including but not limited to the classroom setting, the acts and omissions of the students, the nature of the students, the involvement of the students, and the conditions that Respondent was compelled to work under
- Respondent had an unblemished teaching record at all times before and after the alleged incidents

- the Appellate Division of the Superior Court recognized that tenure dismissal may well have been unwarranted and too harsh, but considered itself as not having the authority to reverse the Commissioner's or State Board's decisions and
- Respondent has enjoyed an unblemished record and has made contributions to society since then.

In sum, Respondent argues he has already been penalized enough, indeed out of proportion for his alleged transgressions, and that the State Board of Examiners should not sanction him further.

Pursuant to N.J.A.C. 6:11-3.6, a hearing notice was forwarded to both Respondent and Mr. Friedman by regular mail on October 17, 1997. The notice explained that following a review of the Answer, it appeared that no material facts were in contest because Respondent admitted that the Commissioner's decision removed him from his tenured position. Respondent was, therefore, provided an opportunity to offer legal argument on the issue of whether the findings and conclusions of the tenure proceeding warranted revocation or suspension of his teaching licenses. On November 5, 1997, a response to the hearing notice was received from Mr. Friedman on behalf of Respondent in the form of a brief.

Respondent's brief objects, *inter alia*, to the hearing in this matter being held through consideration of written arguments and submissions rather than by plenary hearing. He also objects to the prohibition of evidence of rehabilitation and offers the State Board of Examiner's decision in In the Matter of the Revocation of the Teaching Certificates of John Ahern, State Board of Education, decided August 7, 1987 for the proposition that these restrictions and limitations are improper. He seeks a plenary hearing.

As to Respondent's argument that this matter should proceed to a plenary hearing rather than be decided on the papers, the State Board of Examiners observes that pursuant to N.J.S.A. 52:14F-8, an agency head, such as the State Board of Examiners, may conduct a hearing directly. In re Uniform Adm'n. Procedure Rules, 90 N.J. 85 (1982). Moreover, an agency has the discretionary authority to determine whether there are contested issues of material fact requiring an evidentiary hearing, thereby making it appropriate to transmit the matter to the Office of Administrative Law (OAL) for a plenary hearing. Quad Enterprise v. Paramus, 250 N.J. Super. 256 (App. Div. 1991). In Re Uniform Adm'n Procedures Rules, *supra*. If the matter does not involve contested facts, there is no need for it to be transmitted to OAL since the Board can hear the case directly based on a written record. See also, N.J.A.C. 6:11-3.6(a)1(authorizing the State Board of Examiners to hear a case on the basis of written submissions only.).

In considering this case, the State Board of Examiners first notes that it conducted an independent review of the facts established in the tenure case. In response to Respondent's argument, contained in his brief in response to the hearing notice, denying the charges which formed the basis of the tenure proceedings, the State Board of Examiners observes that the Appellate Division decision painstakingly responded to Respondent's similar factual arguments regarding the reliability of the witnesses in the tenure proceeding and the conclusions of fact based on that testimony. See, App. Div. Decision, *supra*, slip opin. at 3-4. Therein the Appellate Decision stressed that the ALJ elaborated in his decision, regardless of some inconsistencies in their testimony, on why he believed "the fundamentals of the students stories were true" (*Id.*) See also, Initial Decision, *supra*, at p. 24-25.

Consequently, in considering the papers filed in this case, the State Board of Examiners concluded that no material facts were in dispute related to those findings and conclusions of law

in the tenure proceedings. The State Board of Examiners determined that the matter could, therefore, proceed to a determination on the papers as to whether the charges proven against him that are the basis of the Order to Show Cause constitute conduct unbecoming a license holder sufficient to warrant revocation or suspension of his licensure, pursuant to N.J.A.C. 6:11-3.6(a)1.

Moreover, it merits emphasizing that the hearing in this matter does not afford Respondent an opportunity to revisit the facts established in the tenure proceeding or to alter those conclusions established in the tenure case against him. The State Board of Examiners is compelled to accept the findings of the tribunal that decided the tenure charges. Respondent had a full and fair opportunity to present his case in that matter and, indeed, availed himself to the fullest of the appeal process. See, In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners, 96 N.J.A.R. 2d (EDE)1, aff'd App. Div. Dkt. No. A-1246-96T5 (September 9, 1997) (Holding that N.J.A.C. 6:11-3.6 does not permit the certificate holder to relitigate facts established in the tenure hearing.). See also, Matter of Tanelli, 194 N.J.Super. 492, 496-7 (App. Div) (1984). (The doctrine of collateral estoppel may be applied in a removal hearing to establish misconduct previously established in a court proceeding). However, the principles of collateral estoppel preclude his renewed challenge to the findings in the tenure case. T.W. v. A.W., 224 N.J. Super. 675 (App. Div. 1988) (Collateral estoppel applies when either party attempts to relitigate facts necessary to a prior judgment).

Neither is this hearing one that considers evidence of rehabilitation. See, Gloria Jackson, supra. Therein, the State Board of Examiners emphasized that the purpose of the hearings conducted by the State Board of Examiners is “to permit circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show

rehabilitation.” (citing In the Matter of the Revocation of the Teaching Certificate of James Noll, State Board of Examiners decision (February 7, 1990) Id. at 16.

Beyond his rehabilitation argument, Respondent also offers points of mitigation which he contends militate against suspension or revocation of his licensure, among them, his unblemished record before the incident, and the conditions in the school which prevailed at the time of the alleged incidents, including classroom setting, as well as the conduct of the students. The State Board of Examiners recognizes that issues in an action taken against a license before this body differ from that in the tenure proceeding before the Commissioner of Education. Hence, its review of the charges upon which Respondent’s dismissal was predicated also included consideration of his points of mitigation with an eye toward assessing whether any such circumstances might absolve the deplorable nature of his conduct as proven in the tenure matter. The Board concluded that Respondent’s actions cannot be condoned nor can his decidedly poor judgment be excused or explained by blaming the students under his care or the circumstances in which he taught. Neither can such a pattern of behavior on his part be trivialized by suggesting that his record was otherwise unblemished.

As noted above, Respondent in his brief emphasizes that the Appellate Division, in reviewing the Roberts tenure matter, observed that it might have decided the sanction differently. The State Board of Examiners rejects Respondent’s contention that *dicta* in the Appellate decision governs its action in this matter. As stated in Van Dalen v. Washington Tp. 120 N.J. 234, 244-45 (1990), and emphasized by the Appellate Division in Roberts, that Court was not charged with conducting a *de novo* hearing. See, Roberts, supra, slip opin. at 4-5. (“[the Appellate Division’s] review of an administrative agency’s action is limited in scope. We will not substitute our judgment for that of an agency unless the action is arbitrary or capricious.”)

Agreeing with the Commissioner and the State Board of Education that the ALJ had a “firm evidential basis” for believing the testimony of the students in the tenure matter, the Appellate Division concluded that there were sufficient credible facts in the record below to support the decision to dismiss Respondent from his tenured employment.

Thus, the State Board of Examiners acknowledges that there are different standards used for deciding tenure and licensure cases, but rejects Respondent’s contention that in this forum, suspension or revocation of his licensure is not warranted. As noted above, the State Board of Examiners looked at the facts as proven in the tenure hearing, as well as to any relevant mitigating circumstances, to determine whether they compel the State Board of Examiners to take action on Respondent’s licenses. Its conclusion is that under all of the circumstances of this case, revocation is unquestionably in order.

By virtue of holding a teaching license, the respondent has been entrusted by the State with the care and custody of school children. Tenure Hearing of Sammons, 1972 S.L.D. 302, 321. The respondent has, however, by his conduct, violated that most sacred trust. He has impermissibly engaged in discussions with minors under his care that were entirely inappropriate for the classroom. The State Board of Examiners agrees with the ALJ's conclusions wherein he states:

***I find that the respondent did participate in and initiate classroom discussions of his own, his wife's and the students' sex lives, had discussions or engaged in monologues regarding oral sex, made a comment about the physical attributes of one of his female students, and related to his students alleged propositions for oral sex for money purportedly involving himself and ‘crackheads.’ As for all of these activities, they were totally unrelated to any classroom work, were absolutely uncalled for and inappropriate, and were not at all the sort of conversation that a teacher would be expected to have with his students, most certainly in a wood shop class. That Mr. Roberts' conduct was violative of the standards expected of a public school teacher cannot be doubted.”

Initial Decision at 28-29.

The State Board of Examiners was extremely dismayed by Respondent's failure of judgment. A teacher who would discuss both his sex life and that of his students in front of his class has no comprehension of the proper role of a teacher. Moreover, in the daily activity of a classroom, a teacher is continually called upon to display proper judgment. Respondent's inability to discern the impropriety of his conduct reflects unfavorably on his judgment. The State Board of Examiners believes that his grave lack of judgment as proven in the tenure hearing raises doubts as to whether he has the necessary characteristics to remain in the classroom. Tenure of Blasco, OAL Dkt. EDU 3842-79 (July15, 1980), mod. Comm'r of Ed. (August28, 1980), mod. St. Bd. of Ed. (Feb.4, 1981).

After independent review of the findings in the tenure matter, the State Board of Examiners agrees with the ALJ that Respondent's conduct was violative of the standards expected of a public school teacher. Such disgraceful behavior dishonors the entire teaching profession; it is conduct unbecoming a certificate holder. Because his grave failure in judgment reveals his unsuitability to be a teacher, he must be denied access to the classroom.

Accordingly, the State Board of Examiners finds Respondent's conduct unbecoming a license holder sufficiently egregious to compel revocation of respondent's teaching licenses.

It is, therefore, ORDERED that Frank Roberts' Teacher of Carpentry, Secondary School Teacher of Industrial Arts and Principal/Supervisor licenses be revoked on this 11th day of December, 1997.

It is further ORDERED that Frank Roberts return his licenses to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fourteen (14) days of receipt of this letter.

Secretary
State Board of Examiners

Date of Mailing: March 25, 1998

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A.
18A:6-28.

IBG:KHK:br:Robertsrv