

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
SONDRA YANNIELLO : ORDER OF REVOCATION
_____ : DOCKET NO: 450-05/97-200

At its meeting of May 15, 1997, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Sondra Yanniello from her tenured position with the Board of Education of Millville for charges of unbecoming conduct. Yanniello currently holds Teacher of Elementary School and Teacher of Spanish certificates, as well as a Substance Awareness Coordinator Certificate of Eligibility with Advanced Standing.

This case originated in June 1994, when the Millville Board of Education certified tenure charges against respondent, Sondra Yanniello. Yanniello was employed first as a Spanish Teacher and then, beginning in the fall of 1993, as a Substance Awareness Coordinator. The district had charged her with unbecoming conduct for her use of illegal drugs.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Joseph Kane heard testimony on several days in February 1995. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on April 20, 1995. In the Matter of the Tenure of Sondra Yanniello, 95 N.J.A.R.2d 262 (EDU).

In that decision ALJ Kane found that Yanniello had begun taking illegal drugs after the death of her first husband in 1986. In December 1988, Yanniello finally informed her principal, Warren Elliott, of her problem with drugs. At that time, Yanniello entered an in-patient treatment facility. (Initial Decision, slip op. at 3-4).

When she returned to school in January 1989, she signed a Health Improvement Program Contract, which called for, among other things, random drug testing. Elliott told Yanniello that although the contract did not specify that she would be terminated in the event of a relapse, that that was the likely outcome. (Initial Decision, slip op. at 4).

Elliott testified that he did not recommend random drug testing nor did he suspect Yanniello of drug use until May, 1994. At that time Franklin MacDonald, (Yanniello's then-supervisor), and Yanniello were attending a conference in Toms River on drugs and sports. (Initial Decision, slip op. at 9). On the morning of May 20, 1994, Yanniello called Macdonald at least three times before 7:30 a.m. She was upset at the prospect of being bumped out of her SAC position and returned to the classroom as a language teacher. According to Macdonald's testimony, Yanniello was not making sense. He advised her to remain in her hotel room until he could arrange for her husband to come and get her. (Initial Decision, slip op. at 9). When Yanniello called later that day, she sounded more normal and told him she was at the conference. She indicated that she had had a drink the night before, thus accounting for her strange behavior. Finally, at 4:30 that day Yanniello called MacDonald from the Lighthouse, a drug and alcohol treatment center. (Initial Decision, slip op. at 9). She told Macdonald that she had checked herself in seeking assistance for her "slip." When Yanniello returned to school the following Monday she was told she had to take a drug test. Although she denied taking drugs, she agreed to the test. Yanniello tested positive for amphetamines. (Initial Decision, slip op. at 9-10). Thereafter, the Millville Board of Education certified tenure charges against Yanniello for unbecoming conduct arising out of her drug use.

After considering all the testimony, ALJ Kane found that Yanniello's conduct violated her contract with the district. (Initial Decision, slip op. at 11). The Judge then considered the appropriate penalty for Yanniello's breach. The ALJ heard lengthy testimony from Yanniello's therapist, Dr. Fred Ryan Chase. Dr. Chase testified that he believed Yanniello's prognosis for recovery was excellent since her "slip" back into drugs was of a short duration, was marked by remorse and a quick cessation of the addictive behavior within 24 hours. (Initial Decision, slip op. at 12).

In addition to this testimony, the ALJ considered whether Yanniello's addiction was a "handicap" as defined in the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq., or the federal Americans with Disabilities Act (ADA), 42 U.S.C.A. 12101 et seq., requiring reasonable accommodation. (Initial Decision, slip op. at 14). The ALJ concluded that Yanniello was handicapped as defined in those acts and entitled to further accommodation from the school district. ALJ Kane held that because she came forward voluntarily and that students were not adversely affected, Yanniello should be held to the "three strikes and you're out" policy adopted by private industry in these matters. (Initial Decision, slip op. at 20). Accordingly, the Judge ordered Yanniello reinstated but set treatment restrictions on her so that she would comply with her Health Improvement Program Contract. The ALJ also held that Yanniello was not entitled to back pay for the 120 days immediately following her dismissal. (Initial Decision, slip op. at 21-22).

In a decision dated June 12, 1995, the Commissioner of Education agreed with the ALJ's Initial Decision as to the finding that Yanniello had engaged in conduct unbecoming a teacher. (Commissioner's Decision, slip op. at 28-29). The

Commissioner, however, disagreed with the ALJ's conclusions that the district had not reasonably accommodated Yanniello and that her students were not affected by her behavior. The Commissioner stressed the pivotal role that districts play in preventing substance abuse among students. (Commissioner's Decision, slip op. at 29-30). He further stated that Yanniello should have known that when she signed her Health Improvement Program Contract disciplinary action could follow if she used illegal drugs. (Commissioner's Decision, slip op. at 30). The Commissioner believed that, upon balance, the district's interests in retaining a drug-free work force and protecting students outweighed Yanniello's interest in any further accommodation. (Commissioner's Decision, slip op. at 30). Accordingly, the Commissioner ordered Yanniello dismissed from her tenured position. (Commissioner's Decision, slip op. at 31). Yanniello appealed from the Commissioner's decision to the State Board of Education.

On January 8, 1997, the State Board of Education affirmed the Commissioner's decision in this matter. 97 N.J.A.R.2d 250 (EDU). The State Board agreed that the district had reasonably accommodated Yanniello when it supported her efforts to enroll in an in-patient drug treatment facility in 1982 and reinstated her thereafter. (St. Bd. Decision, slip op. at 4-5). Furthermore, the State Board rejected the ALJ's finding that Yanniello had voluntarily admitted her slip to her superiors. The State Board noted that Yanniello was only forthcoming after her drug test came back positive, insisting up until that point that she had only consumed alcohol. (St. Bd. Decision, slip op. at 6). Consequently, the State Board affirmed the determination of the Commissioner to dismiss Yanniello from her tenured position. (St. Bd. Decision, slip op. at 6-7).

Thereafter, on May 15, 1997, the State Board of Examiners issued an Order to Show Cause to Yanniello as to why her certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Order to Show Cause was mailed to Respondent by regular and certified mail on July 25, 1997. The Order provided that if respondent desired to file an Answer to the Order that Answer must be filed within 20 days. On July 28, 1997 Yanniello's attorney informed the State Board of Examiners that the case had been appealed to the Appellate Division of the Superior Court of New Jersey. He asked that Yanniello's case before the Board of Examiners be held in abeyance until the court rendered its decision. On September 25, 1997, the Board of Examiners granted Yanniello's request and asked her attorney to keep the Board apprised of the progress of the appeal.

The Appellate Division issued its decision on April 2, 1998. In the Matter of the Tenure Hearing of Sondra Yanniello, App. Div. Dkt. No. A-3482-96T1 (April 2, 1998). In affirming the State Board's decision, the court noted that Yanniello had not disclosed her prior drug history to the local district when she was hired. This history included prior cocaine use, a conviction for illegal drug possession and resignation from a previous teaching position so that she could enter a drug treatment program. Slip op. at 2. Yanniello's appeal focused on the issue of whether the district had provided reasonable accommodation for her handicap. The court stated that, given the legal standard of review, it had to defer to the decision of the agency head, in this case, the State Board of Education. Moreover, the Appellate Division recognized the agency's expertise in balancing "the interests of the Millville education system, particularly that for teenagers,

with those of the petitioner's in the reasonable accommodation context.” Id. at 12. The court therefore concluded that the evidence and the inferences to be drawn therefrom supported the State Board's decision. Id. at 13. Finally, the court noted that the State Board's rejection of the “three strikes” rule was a policy decision that the court had no authority to countermand. Accordingly, the Appellate Division upheld Yanniello's dismissal from her tenured position. Id. at 13-14.

Yanniello failed to advise the Board of Examiners of the disposition of the appellate matter, as she had been instructed. Upon learning that the Appellate Division had decided the matter the previous April, on January 28, 1999, the State Board of Examiners notified Yanniello that she had 20 days to respond to the Order to Show Cause it had issued in July 1997. Yanniello asked for an extension of time to answer, which was granted. She submitted her Answer on March 3, 1999. In her Answer Yanniello admitted that the district had brought tenure charges against her. She also stated that had she not informed school authorities of her “slip” they would never have known that she had taken illegal drugs and she would have not taken a drug test. Yanniello also stressed that her initial disclosure of her drug problem was voluntary. (Answer, ¶¶ 2-3). In the remainder of her Answer, Yanniello added that there was no basis to consider revoking her certificates since five years had elapsed since her “slip.” (Answer, ¶ 6).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on May 5, 1999, the Board of Examiners sent Yanniello a hearing notice by regular and certified mail.. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, respondent was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct

unbecoming a certificate holder. It also explained that, upon review of the charges against her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her offense warranted action against her certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

After receiving two extensions of time, Yanniello responded to the Hearing Notice on August 9, 1999. In that response, Yanniello claimed that the Board of Examiners had a heavier burden of proof than that exercised by the State Board of Education when it removed her from her tenured position. (Hearing Response, p. 4-5.). Moreover, Yanniello also argued that because she was “handicapped” under the LAD, the Board of Examiners bore the burden of proving that she was not entitled to a reasonable accommodation in keeping her certificates. (Hearing Response, p. 5). She also stated that because her “slip” was part of her addiction and she voluntarily reported it and sought treatment she was entitled to leniency. (Hearing Response, pp. 9-10). Yanniello also pointed to her unblemished record and argued that her conduct did not involve students or faculty, did not occur on school property and did not interfere with the administration of the school system. (Hearing Response, pp. 12-13). Finally, Yanniello posited that she should not be punished for Millville’s failure to implement an employee assistance program or to administer random drug tests; she claimed that had the district done so she might not have “slipped.” (Hearing Response, p. 14). In addition to her arguments, Yanniello submitted myriad character references.

The threshold issue before the State Board of Examiners in this matter, is to determine independently from the facts as found in the tenure hearing whether Yanniello’s conduct, which led to her subsequent loss of tenure, constitutes conduct

unbecoming a certificate holder. At its meeting of September 23, 1999, the State Board of Examiners reviewed the tenure matter and papers filed by respondent in response to the Order to Show Cause. After reviewing her response, the Board of Examiners determined that no material facts related to Yanniello's offense were in dispute since she admitted the underlying conduct as charged in the tenure decision.

It should be noted here that in its examination of this case, as in all others, the Board of Examiners has undertaken an independent review of the record. Moreover, as articulated in In the Matter of the Certificate of Gerard Battle, Docket No. 510-02/99-198 (Sept. 23, 1999):

[T]he standard for the suspension or revocation of a teaching certificate, although not the same as that used for tenure decisions, is just as exacting. It is a standard that differs only in scope, not depth. In other words, this Board's decisions regarding the loss of a certificate cannot be held to a more stringent standard than those of the Commissioner regarding the loss of tenure. Rather, the Board of Examiners' view is more "global" than local since it must make its decisions in the context of removing a teacher from all classrooms in the state and not just one district. See In the Matter of the Revocation of the License of Polk, 90 N.J. 550 (1982)(evidentiary standard to be used in an administrative proceeding regarding the revocation or suspension of a professional license is a fair preponderance of the evidence and not a higher standard.)

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.A.C. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree

of self-restraint and controlled behavior rarely requisite to other types of employment.”
Tenure of Sammons, 1972 S.L.D. 302, 321.

In this case, Yanniello has not denied the charges in the Order to Show Cause. Accordingly, her actions regarding her use of illegal drugs in violation of her Health Improvement Program Contract constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Yanniello’s offense, as set forth in the Order to Show Cause, represents just cause to act against her certificates pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

Yanniello repeatedly argues that her behavior was a mere “slip” and that she reported it voluntarily. Her definition of voluntarily is sorely lacking. According to the testimony at the tenure hearing, Yanniello’s erratic behavior on the phone triggered her supervisor’s suspicions. Even when she was confronted, Yanniello denied taking amphetamines; instead she claimed she had ingested alcohol, a legal substance. Only after the drug test revealed the true nature of Yanniello’s “slip” did she offer information. Furthermore, as pointed out in the Appellate Division decision, Yanniello’s behavior has been marked by concealment, not disclosure. She never told her employer about her prior history, including cocaine use and a conviction for illegal drug possession. Her current attempt to hold her employer responsible for her troubles because of its failure to administer random drug tests, is not only despicable but also indicative of the “shift the blame” posture she has taken throughout this matter.

Yanniello also claims that she is entitled to reasonable accommodation here under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and that that accommodation militates against revoking or suspending her certificates. Her argument

misstates the requirements of the LAD. The LAD requires that, where feasible, an employer should afford an opportunity for an employee handicapped by substance abuse. Matter of Cahill, 245 N.J. Super. 397, 401 (App. Div. 1991). The State Board of Examiners, however, is not Yanniello's employer so that the "accommodation" provision does not apply to it. There is no requirement that a licensing agency offer additional opportunities to the licensee to improve her conduct. Moreover, even if the LAD applied in licensing matters, it would not exonerate an individual who, like Yanniello, has engaged in criminal behavior. See Barbera v. DiMartino, 305 N.J. Super. 617 (App. Div. 1997) cert. denied 153 N.J. 213 (1997) (LAD does not protect employee who has engaged in egregious or criminal activity, even if disability contributed to the conduct.) Indeed, this Board's responsibility is to the students of New Jersey and those individuals who maintain the high standards of the teaching profession in this State. In balancing their interests against Yanniello's right to teach, the scales weigh heavily in their favor.

Yanniello also argues that she should retain her certificates since the incident occurred off school grounds and did not affect students or the administration of the school system. It is well established that the State Board of Examiners has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom. See Cox v. State Board of Examiners, (App. Div. Docket No. A-3527-81T3) (November 18, 1983); State Board of Examiners v. Krupp, 3 N.J.A.R. 285 (1981).

Moreover, as noted above, the Commissioner has long held that teachers serve as role models for their students. Therefore, a teacher's whole life is subject to scrutiny, not just her actions within the schoolhouse doors. Although the Commissioner addressed that issue in the context of a tenure hearing, his observation is equally applicable here:

[R]espondent's argument that, because the occurrence happened in the evening away from school premises, both the Board and the Commissioner have no authority to act, is without merit. Individuals who must comport themselves as models for young minds to emulate choose the teaching profession. This heavy responsibility does not begin at 8:00 a.m. and conclude at 4:00 p.m., Monday through Friday, only when school is in session. Being a teacher requires, *inter alia*, a consistently intense dedication to civility and respect for people as human beings. The Commissioner has, on past occasions, determined tenure charges arising from incidents which happened in the evening both on and off school property. See, In the Matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County, 1965 S.L.D. 159, aff'd State Board of Education 1970 S.L.D. 448; In the Matter of the Tenure Hearing of John H. Stokes, School District of the City of Rahway, Union County, 1971 S.L.D. 623.

In the Matter of the Tenure Hearing of Robert H. Beam, 1973 S.L.D. 157, 163. Yanniello therefore cannot exclude her "out-of-school" behavior from this tribunal's examination. Since there is nothing in this record that would incline this Board to allow Yanniello to remain in a classroom, the only proper response to her conduct is revocation.

Accordingly, it is therefore ORDERED that Sondra Yanniello's Teacher of Elementary School, Teacher of Spanish and Substance Awareness Coordinator Certificate of Eligibility with Advanced Standing certificates be revoked on this 23rd day of September 1999. It is further ORDERED that Yanniello return her certificates to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: December 16, 1999

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

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