

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
M.S. : ORDER OF REVOCATION  
OAL DKT NOS. HDY 7817-99  
EDE 9001-99  
\_\_\_\_\_ : AGENCY DOCKET NO: 526-06/99-219

DECISION

At its meeting of June 15, 2000, the State Board of Examiners reviewed a decision forwarded by the Office of Administrative Law (OAL) that had recommended that M.S., a tenured teacher, have her teaching certificates revoked due to unbecoming conduct. M.S. currently holds Elementary School Teacher and Teacher of the Handicapped certificates.

M.S. was a special education teacher accused of engaging in inappropriate behavior and physical conduct with several students. The Division of Youth and Family Services (DYFS) investigated the charges and substantiated sexual abuse. Although M.S. was never charged criminally and was exonerated in a tenure proceeding, I/M/O the Tenure Hearing of M.S., OAL Docket No. EDU \_\_\_\_\_ (State Bd. of Ed.),<sup>1</sup> DYFS refused to remove her name from its central registry of offenders. M.S. appealed that decision to the New Jersey Superior Court, Appellate Division, arguing that DYFS' inclusion of her name in its registry denied her due process and claiming that DYFS was bound by the State Board of Education's tenure decision clearing her. In the Matter of Allegations of Sexual Abuse at East Park High School, 314 N.J. Super. 149 (App. Div. 1998). The

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<sup>1</sup> Pursuant to N.J.S.A. 9:6-8.10(a), confidentiality of persons and records is mandated in child abuse cases. Since M.S.' tenure proceeding was not confidential but is referenced here, it will not be identified in this decision.

court concluded that DYFS' administrative procedures did deny M.S. due process because she had no opportunity to be represented by counsel, to present witnesses, to confront the witnesses against her and to receive a written decision. Id. at 166. The court therefore remanded the matter to the Office of Administrative Law for a hearing on whether M.S.' name should remain in DYFS' central registry. Id. at 166-68.

In the interim, on June 17, 1999, the State Board of Examiners issued an Order to Show Cause to M.S. as to why her teaching certificates should not be revoked or suspended. The Board of Examiners' Order was predicated on DYFS' substantiated findings of sexual abuse. In addition, the Board of Examiners alleged that M.S. gave false testimony at her tenure hearing when she denied having any sexual conversations with her students.

The Order to Show Cause was mailed to Respondent by regular and certified mail on June 23, 1999. The Order provided that if respondent desired to file an Answer to the Order that Answer must be filed within 20 days. Prior to filing her Answer, on July 9, 1999, M.S. filed an Emergent Motion in the Appellate Division seeking to enjoin the Order to Show Cause proceeding and remove her name from the central registry. In the Matter of Allegations of Sexual Abuse at East Park High School, Motion No. M-7454-98. While the motion was pending, on July 13, 1999, M.S. filed her Answer to the Order to Show Cause. In that Answer M.S. admitted that the district had brought tenure charges against her. (Answer, ¶5). She also stated that those charges were dismissed. (Answer, ¶5). In the remainder of her Answer, M.S. added that her credibility and honesty had already been adjudicated in the tenure proceeding in her favor. Finally, M.S. denied that she had ever engaged in any conduct that provided just cause for the suspension or

revocation of her certificates. (Answer, ¶6). The Appellate Division denied M.S.' Motion for Emergent Relief on July 20, 1999. In the Matter of Allegations of Sexual Abuse at East Park High School, Motion No. M-7454-98 (denied July 20, 1999).

Thereafter, the Order to Show Cause proceeding was transferred to the OAL. Administrative Law Judge (ALJ) Irene Jones ordered M.S.' appeal of DYFS' action as well as the Order to Show Cause proceeding consolidated into one case. Division of Youth and Family Services v. M.S. and In the Matter of the Certificates of M.S., OAL Dkt. No. HDY 7817-99 and EDE 9001-99 (Order on Motion, Order of Consolidation and Predominant Interest Determination and Sealing of the Record)(September 28, 1999). She also determined that the Board of Examiners had the predominant interest in the matter. On November 4, 1999, the Board of Examiners adopted the ALJ's Initial Decision regarding consolidation and predominant interest. In the Matter of the Certificates of M.S., Docket No. 526-06/99 (Decision on Motion)(St. Bd. of Examiners, November 4, 1999). The ALJ held hearings on October 6-8, 1999. After receiving post-hearing submissions, the record closed and the ALJ issued her Initial Decision on April 27, 2000. DYFS v. M.S. and I/M/O the Certificates of M.S., OAL Dkt. Nos. HDY 7817-99 and EDE 9001-99 (consolidated)(DYFS and St. Bd. of Examiners, April 27, 2000).

In that decision the ALJ concluded that DYFS had proven the charge of sexual abuse against M.S. by a preponderance of the credible evidence. Id. at 47-48. She found that M.S. had engaged in sexual acts with one student, and sexually stimulating conversations with another student, one of which had been recorded. Id. at 47. ALJ Jones also ruled that M.S. had given untruthful testimony at her tenure hearing. Id. at 48.

These acts, taken together, led the ALJ to conclude that M.S. had engaged in conduct unbecoming a teacher. Id. Judge Jones therefore determined

that the respondent's conduct was so egregious that revocation of her certificates is the only appropriate remedy. The respondent not only violated the high standard of conduct expected of her teaching profession, she took advantage of classified students. Further, the conduct herein was not isolated, as the respondent engaged in a pattern of conduct over a period of time. Thus, the harm she has inflicted on these students is immeasurable. Id.

In addition to the above findings, the ALJ held that M.S.' name should remain in DYFS' central registry.<sup>2</sup> Id.

As noted earlier, the ALJ's Initial Decision was filed with the Board of Examiners for consideration on April 27, 2000. Thus, it is now up to the Board of Examiners to adopt, modify or reject the Initial Decision and render a final decision on those matters within the scope of its predominant interest. N.J.S.A. 52:14B:10.

The Board of Examiners has thoroughly reviewed the Initial Decision, exceptions, reply exceptions and all attachments submitted by the parties in this case. After full consideration, the Board of Examiners adopts, with clarification, the Initial Decision in this matter.

The Board of Examiners finds that the ALJ was in error in relying upon the testimony of the audio expert for purposes of identifying M.S.' voice on the tape. The sole purpose of that expert's testimony was to verify that the tape was intact and was an unaltered original. The Board of Examiners finds, however, that the ALJ's determination

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<sup>2</sup> That issue was not before the Board of Examiners and will be adjudicated by the Director of DYFS after the Board of Examiners renders its decision.

on that point, was harmless error in the context of the entire hearing. Petitioner produced other evidence that proved M.S. had had an improper relationship with the student.

Furthermore, the ALJ was the fact-finder in this case and had the opportunity to determine the credibility of all witnesses. She determined that the charges of improper sexual conduct against M.S. were true. The Board of Examiners sees no reason to disturb the ALJ's determination of the credibility of witnesses.

Moreover, notwithstanding M.S.'s assertions to the contrary, the ALJ did not exceed the scope of the proceeding as to the issues in the Order to Show Cause. (Exceptions, pp. 3-6.) Initially, it should be noted that the Board of Examiners was not a subject of the Appellate Division's ruling narrowing the scope of the hearing. Rather, the Board of Examiners' action seeking to suspend or revoke M.S.'s teaching certificates was consolidated with the DYFS proceeding after-the-fact. Thus, the Board of Examiners was not precluded from using information from the prior case. Furthermore, this proceeding is one that seeks to determine M.S.'s fate regarding her ability to teach in any of New Jersey's public schools, not just one district as in a tenure proceeding. Moreover, even DYFS was allowed to introduce evidence that went beyond the scope of what was presented at the tenure proceeding:

As DYFS points out..., in reaching its conclusion it relied on much evidence which, for some reason, was not produced at the tenure hearing....[M.S.] argues that DYFS should nonetheless be bound by the outcome of the tenure hearing based on the concept of "judicial estoppel" because it requested us to stay this appeal pending the outcome of the tenure case which it claimed "might" moot the issue here. [M.S.] views this as an acknowledgement of the preclusive effect of the tenure hearing.... Not so. We see it only as a recognition that if the tenure charges had been sustained, DYFS's conclusion that the sexual abuse charges against [M.S.] had been substantiated would be

unassailable. It was not a concomitant concession that if the tenure charges were dismissed on less evidence than DYFS possessed, that agency would be barred from maintaining its earlier finding of substantiated sexual abuse. In sum, we disagree with [M.S.] that the outcome of the tenure case disposes of this case as well. Because DYFS possesses evidence which the East Park School Board was unable or unwilling to produce during the tenure case, there is no warrant for application of a doctrine of preclusion. In the Matter of Allegations of Sexual Abuse at East Park High School, 314 N.J. Super. at 167-68.

M.S. also contends that the ALJ erred by admitting the transcript of the tape at issue into evidence. (Exceptions, pp. 9-12.) The Board of Examiners finds no merit in this contention. As the Deputy Attorney General correctly points out, the ALJ listened to the entire tape before admitting the transcript into evidence. (Reply Exceptions, p. 7.) Moreover, M.S. did not challenge the transcript's accuracy although given that opportunity. Rather, the transcript is nothing more than an accurate distillation of the relevant conversation. Thus, it is immaterial whether the ALJ introduced this form of evidence in its auditory or written form.

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. "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. Nothing in M.S.' behavior, as proven in this proceeding, demonstrates that she had even a modicum of understanding as to what is expected of a teaching professional. Her actions fall so far below that standard that the Board of Examiners has

no choice but to agree with the ALJ's conclusion that revocation is warranted here. Consequently, after review of the entire record, we adopt, with the above-noted clarification, the ALJ's Initial Decision in this matter.

Accordingly, it is therefore ORDERED that M.S.' Elementary School Teacher and Teacher of the Handicapped certificates be revoked on this 15th day of June 2000. It is further ORDERED that M.S. return her certificates to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision. It is further ORDERED that this final decision as well as the full record in this matter be forwarded to the Director of the Division of Youth and Family Services so that a decision may be rendered on any outstanding issues within the remainder of the 45 day regulatory period.

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Secretary  
State Board of Examiners

Date of Mailing: July 12, 2000

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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