

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
LYDIA ANDERSON : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0304-114

At its meeting of June 13, 2002, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education regarding Lydia Anderson, a non-tenured teacher. The Commissioner had dismissed Anderson's petition, appealing her dismissal from her position with the State-Operated School District of the City of Newark (hereafter Newark) for charges of unbecoming conduct. Anderson currently holds Teacher of Elementary School and Teacher of Psychology certificates.

This case originated when Newark dismissed respondent, Lydia Anderson, from her position as a fourth grade teacher. The district charged her with unbecoming conduct for engaging in a tug-of war with a student over a chair when the student attempted to sit down after Anderson had punished him by ordering him to stand in class for half an hour. When Anderson let go, the student fell. In another incident, Anderson allowed a student's uncle to administer a beating in her presence. Anderson did not notify either the school principal or the Division of Youth and Family Services (DYFS.) After Newark terminated Anderson's employment, she appealed the dismissal claiming that Newark had violated her constitutional and statutory rights.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Elinor Reiner heard testimony on several days in August 1998 and March 1999. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on August 16, 1999.

In that decision, ALJ Reiner found that Newark had not violated Anderson's rights when it dismissed her. Moreover, the ALJ determined that the district had investigated the incidents, concluded that they had occurred and provided Anderson with a statement of reasons for her dismissal (Initial Decision, slip op. at 21). ALJ Reiner concluded that, as a nontenured teacher, Anderson had received everything to which she was entitled. The ALJ also concluded that Anderson had testified untruthfully during the hearing, further confirming the appropriateness of the district's action. (Initial Decision, slip op. at 22.) Judge Reiner therefore upheld Newark's decision to terminate Anderson and dismissed her appeal. (Initial Decision, slip op. at 22.)

In a decision dated January 19, 2000, the Commissioner of Education affirmed the ALJ's Initial Decision as to Anderson's dismissal. The Commissioner agreed with the ALJ that Anderson had failed to prove that the local board had violated her statutory or constitutional rights when it fired her. The Commissioner therefore dismissed Anderson's petition of appeal. (Commissioner's Decision, slip op. at 28-29). The Commissioner also transmitted the matter to the State Board of Examiners pursuant to (former) N.J.A.C. 6:11-3.6<sup>1</sup> for appropriate action regarding Anderson's certificates. Before the matter was transferred, Anderson appealed her decision to the State Board of Education.

On February 7, 2001, the State Board of Education affirmed the Commissioner's decision for the reasons he had expressed. Furthermore, the State Board also stated that, as a non-tenured teacher, Anderson had no federal or state constitutional due process

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<sup>1</sup> On January 20, 2004, the New Jersey State Board of Education adopted a new administrative code governing professional licensure and standards. That new code is codified at N.J.A.C. 6A:9. Since the Board of Examiners took action in this matter prior to the adoption of the new code, all citations in this decision are to the former administrative code.

right to a hearing upon her termination. (State Bd. Of Ed. Decision, slip op. at 2.) Anderson then appealed the matter to the Superior Court of New Jersey, Appellate Division. After recounting the procedural history of the case the court held that Anderson's contentions were without merit to require discussion in a written opinion. The court then affirmed the decision for the reasons expressed in the Commissioner and State Board's decisions. Anderson v. State-Operated School District of the City of Newark, Docket No. A-3972-00T2 (March 26, 2002) (Unreported opinion.)

Thereafter, on June 13, 2002, the State Board of Examiners considered Anderson's case. It issued an Order to Show Cause to Anderson as to why her certificates should not be suspended or revoked. The Order was predicated on the behavior that had led the district to terminate Anderson's employment.

The Board mailed the Order to Show Cause to Anderson by regular and certified mail on December 3, 2002. The Order provided that Anderson must file an Answer within 20 days. Anderson filed an Answer on December 26, 2002. In her Answer Anderson admitted that the district had terminated her employment. She also stated that her student was not injured in a "tug of war" and that, in fact, she was the one who was injured when the student kicked her because she would not move him to another class. (Answer, ¶¶ 4). Anderson also stated that she did not allow the uncle to beat his niece in her presence. Anderson stated that her attention was diverted elsewhere when the uncle acted against his niece. In the remainder of her Answer, Anderson added that the Board of Examiners had no just cause to revoke or suspend her certificates. (Answer, ¶ 5.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on March 31, 2003, the Board sent Anderson a hearing notice by regular and certified mail. The notice explained that, since

no material facts appeared to be in dispute regarding the tenure charges, Anderson would have the 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 Anderson's offense warranted action against her certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Anderson responded to the Hearing Notice on May 7, 2003. In that response, she claimed that she was not responsible for the "sudden unanticipated reaction" of one of her student's relatives. She added that the principal who brought this individual into the school and then left him in Anderson's class was never disciplined. (Hearing Response, p. 1.) She also stated that "[t]he 'de minimus' act of striking the belt on the 'covered coat' on the child is not an assault." (Hearing Response, p. 1.) Anderson also included copies of her satisfactory evaluations, her degrees and recommendations in her Answer.

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Anderson's conduct and her subsequent loss of employment constitute conduct unbecoming a certificate holder. At its meeting of September 25, 2003, the State Board of Examiners reviewed the charges and papers Anderson filed in response to the Order to Show Cause. After reviewing her response, the Board of Examiners determined that no material facts related to Anderson's offense were in dispute since she admitted that the Commissioner had issued a decision upholding the ALJ's findings. Moreover, Anderson is collaterally estopped from relitigating the issues that were before the ALJ in her administrative hearing since she has already had the

opportunity to defend herself against those allegations in the context of that proceeding. Monek v. Borough of South River, 354 N.J. Super. 442 (App. Div. 2002.) This Board agrees with the ALJ that Anderson's "tug-of-war" with a child, resulting in his injury, was inappropriate behavior for any adult, especially a teacher. Furthermore, her inability to recognize that permitting an adult to hit a child in her classroom in front of her and other students is egregious speaks volumes about her lack of judgment. Accordingly, Anderson's actions regarding her two students constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Anderson'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.

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. As noted above, there can be no dispute that Anderson's actions in the incidents this Board has reviewed falls far short of our expectations for appropriate teacher behavior. Thus, the Board believes that the only proper response to Anderson's breach is revocation.

Accordingly, on September 25, 2003 the Board of Examiners ORDERED that Lydia Anderson's Teacher of Elementary School and Teacher of Psychology certificates be revoked. She was further ORDERED to return her certificates to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of the decision.

Subsequent to receiving notice of the Board of Examiners' revocation decision (but not the decision itself), Anderson submitted a Motion for Reconsideration of the decision. The Board considered Anderson's Motion at its meeting of December 11, 2003.

In support of her Motion, on October 10, 2003, Anderson submitted a letter to the Board of Examiners. In that letter, she claimed that she had received a biased trial before ALJ Reiner. Anderson claimed, among other things, that she was threatened and harassed to settle the case and warned that if she did not, the ALJ would ask the Commissioner to request that the State Board of Examiners revoke her teaching certificates. (Letter in Support of Motion, p.1.) Anderson also alleged that other teachers and the principal of the school had also acted inappropriately and that there were no repercussions against them. Anderson stated that she was innocent of the allegations against her and that "the whole issue against me is 'defamation, deception and judicial corruption'." (Letter in Support of Motion, p.2.)

The Board considered Anderson's motion at its December meeting. After reviewing Anderson's submission, the Board voted to deny her motion since Anderson failed to provide new facts or legal authority in support of her case that the Board had not considered initially.

Accordingly, it on this 11<sup>th</sup> day of December 2003 ORDERED that Lydia Anderson's Motion for Reconsideration is hereby denied. It is further ORDERED that in accord with the State Board of Examiners' decision of September 25, 2003 revoking Anderson's certificates, that she return her certificates to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

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Joan E. Brady, Secretary  
State Board of Examiners

Date of Mailing: March 11, 2004

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