

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
ERIC DEERING : ORDER OF REVOCATION
_____ : DOCKET NO: 0405-187

At its meeting of January 17, 2002, the State Board of Examiners voted to issue Eric Deering an Order to Show Cause. The Order was predicated upon findings in a Division of Youth and Family Services (DYFS) report that had substantiated allegations of physical abuse against Deering. Deering currently holds a Teacher of Elementary School Certificate of Eligibility, issued in February 1993 and a Teacher of Elementary School certificate, issued in August 1996.

This case originated when the State Board of Examiners issued an Order to Show Cause to Deering based on an incident that happened in the middle school where he taught. According to the allegations in the DYFS report, Deering used excessive force when he attempted to break up a fight between two students. Although the altercation had ended, and one student had left the room, he grabbed the other student by his shirt collar. The force of Deering's actions made the student bang his head on a desk and sustain an injury to his forehead. As a result of the information it received from DYFS, on January 17, 2002, the Board of Examiners voted to issue an Order to Show Cause to Deering as to why his certificates should not be suspended or revoked.

The Board sent Deering the Order to Show Cause by regular and certified mail on April 8, 2002. The Order provided that Deering's Answer was due within 20 days. Deering filed an Answer on August 20, 2002. In his Answer, Deering stated that he lacked knowledge and information sufficient to form a belief as to the truth of the allegations of the Order to Show Cause. (Answer, ¶ 2.) He also stated that he had

appealed the DYFS finding that he had engaged in physical abuse of a student and that therefore the Board of Examiners could not use that allegation as the basis of a revocation proceeding. (Answer, Affirmative Defenses, ¶ 1.) He also claimed the conclusions in the DYFS report had no factual support and that, even if true, were not sufficient to support the revocation or suspension of his teaching certificates. (Answer, Affirmative Defenses, ¶¶ 3, 4.)

The Board of Examiners transmitted the case to the Office of Administrative Law (OAL) on October 28, 2002. On March 25, 2003, DYFS transmitted Deering's appeal of its decision sustaining the charges of child abuse against him. The two matters were assigned to Administrative Law Judge (ALJ) Elinor Reiner who consolidated them for hearing. ALJ Reiner heard testimony and after both parties submitted post-hearing briefs, the record closed on July 28, 2004. ALJ Reiner issued her Initial Decision on September 13, 2004. *State Board of Examiners v. E.D.*, Docket No. EDE 9195-02 (September 13, 2004).

In that decision, ALJ Reiner found that, Deering acted "entirely inappropriately" in dealing with the physical altercation between the two students. (Initial Decision, slip op. at 21.) The ALJ determined that it was Deering's forceful pulling of the student that caused him to injure himself and that Deering continued to pull him out of the classroom after the student's head hit the desk. (Initial Decision, slip op. at 21.) ALJ Reiner found that the student credibly described Deering's aggressiveness during the incident and she concluded that his actions were "abusive and unnecessary." (Initial Decision, slip op. at 21.) The ALJ therefore concluded that DYFS had proven by the preponderance of the believable evidence that no student was in any danger at the time Deering acted. (Initial

Decision, slip op. at 22.) ALJ Reiner held that since Deering's conduct was intentional, even if the result was not, it constituted child abuse. (Initial Decision, slip op. at 23.)

ALJ Reiner then considered whether her finding of substantiated abuse mandated the automatic revocation or suspension of Deering's certificates. (Initial Decision, slip op. at 24.) She concluded that revocation was not automatic and in fact, held that the Board of Examiners had to demonstrate that Deering's actions constituted conduct unbecoming a teacher or other just cause to warrant revocation. (Initial Decision, slip op. at 24.) The ALJ further held that her decision would be guided by an analysis of the nature of the offense, any mitigating circumstances and Deering's record. (Initial Decision, slip op. at 27.) ALJ Reiner acknowledged that the incident here "lasted no more than a few minutes and had no permanent effects on the operation of the school or the pupil involved." (Initial Decision, slip op. at 27.) She also held that although Deering's actions were unduly aggressive, "they were not premeditated, cruel or vicious." (Initial Decision, slip op. at 27-28.) In view of Deering's exceptional record both before and after the incident, ALJ Reiner determined that his teaching certificates should not be revoked or suspended. (Initial Decision, slip op. at 28.) Rather than impose that drastic penalty, she concluded that the "DYFS substantiated-abuse determination should serve as a sufficient warning and deterrent to respondent that a repeat occurrence of such behavior will not be condoned or tolerated." (Initial Decision, slip op. at 28.) Accordingly, ALJ Reiner affirmed DYFS' finding of substantiated abuse and denied the Order to Show Cause. (Initial Decision, slip op. at 29.)

On September 28, 2004, the Deputy Attorney General (DAG) representing the State Board of Examiners filed exceptions to the ALJ's decision. In her exceptions, the

DAG claimed that the ALJ erred in holding that the substantiation of physical abuse should not lead to the revocation of Deering's certificates. (Exceptions, p. 2.) The DAG argued that engaging in corporal punishment constituted conduct unbecoming a teacher thereby warranting revocation of Deering's teaching certificates. (Exceptions, p. 5.) The DAG also objected to ALJ Reiner's finding that Deering's record, coupled with the transitory nature of the offense, justified the retention of his certificates. (Exceptions, p. 6.) The DAG argued that Deering's offense was sufficiently grave and there were no mitigating circumstances present since neither child was in physical danger when Deering intervened. (Exceptions, p. 7.) Accordingly, the DAG argued that this event was sufficiently flagrant to justify revoking Deering's certificates. (Exceptions, pp. 8-10.)

At its meeting of January 20, 2005, the State Board of Examiners reviewed the Initial Decision and the exceptions. After full and fair consideration of all the submissions, the Board voted to adopt the Initial Decision. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings.

Furthermore, the Commissioner has long held that teachers serve as role models for their students. *In re Tenure of Sammons*, 1972 S.L.D. 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (Sup. Ct. 1943), *aff'd*, 131 N.J.L. 326 (E & A 1944). The Board of Examiners would be remiss in its duty if it did not reiterate the ALJ's finding that Deering's behavior was serious and deviated from the standards expected of a teacher. Nevertheless the Board of Examiners agrees with

ALJ Reiner that Deering's lapse here does not rise to a level warranting revocation. Furthermore, the Board of Examiners agrees that although Deering engaged in conduct that demonstrates extremely poor judgment, this was an isolated incident in an otherwise unblemished record. Consequently, the Board believes that no further action is required here.

Accordingly, it is therefore ORDERED that the Initial Decision in this matter is hereby adopted in its entirety on this 20th day of January 2005. It is further ORDERED that the Order to Show Cause in this matter is dismissed.

Michael K. Klavon, Acting Secretary
State Board of Examiners

Date of Mailing: March 7 , 2005

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