

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
NEIL BROWN : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0708-298

At its meeting of November 20, 2008, the State Board of Examiners (Board) reviewed information it had received from the West Windsor-Plainsboro Regional School District (WWP) regarding Neil Brown. Pursuant to *N.J.A.C. 6A:9-17.4*, WWP reported that Brown had resigned from his teaching position after he was accused of unbecoming conduct involving his alleged interactions with female students. WWP alleged that Brown had inappropriately touched a female student by rubbing his hand on her thigh. The district also alleged that Brown had engaged in inappropriate relationships with female students in 1997 and 2001. In 1997 he violated the principal's directive to stay away from a student, and in 2001 his increment was withheld after he made a female student uncomfortable with his unsolicited attention. In addition, the former high school principal indicated that between the years 1997 and 2001 the school staff raised many concerns regarding Brown's relationships with female students. Brown holds a Teacher of Social Studies certificate, issued in July 1988 and a Supervisor certificate, issued in May 2001. Upon review of the above information, at its February 23, 2009 meeting, the Board voted to issue an Order to Show Cause to Brown as to why his certificates should not be revoked.

The Board sent Brown the Order to Show Cause by regular and certified mail on February 25, 2009. The Order provided that Brown must file an Answer within 30 days. Brown responded on August 25, 2009. In his Answer, Brown denied all of the allegations in the Order to Show Cause. (Answer, ¶¶ 3-7).

Since there were material facts in dispute, on November 18, 2009, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. Administrative Law Judge (ALJ) Ana Viscomi heard the matter on January 5, January 7 and February 22, 2011. The record closed on July 8, 2011 and the time for rendering a final decision was extended until April 6, 2012

through a series of orders of extension. ALJ Viscomi did not render a decision prior to being sworn in as a Superior Court judge and the matter was transferred without objection to Chief ALJ Laura Sanders who briefly re-opened and then finally closed the record on April 12, 2012. She issued an Initial Decision on May 8, 2012. *In the Matter of the Teaching Certificate of Neil Brown*, Dkt. No. EDE 6986-09 (Initial Decision, May 8, 2012).

In that decision, ALJ Sanders found that in October 2007 a student, J.L., approached Brown during study hall for a hall pass. She wound up sitting with him and another student and when that student left, Brown pulled J.L.'s chair next to his. (Initial Decision, slip op. at 4). J.L. was telling Brown about some problems she was having with other students when he placed his hand on her thigh and said "Don't worry. I like you." *Ibid.* ALJ Sanders found that Brown also patted J.L.'s back "creating an atmosphere of physical closeness that was inappropriate." *Id.* at 6-7. J.L.'s reporting of the incident to another teacher resulted in Brown's suspension and J.L.'s transfer to another school for the rest of her freshman year because of harassment she received from other students. *Id.* at 4, 7. The ALJ also found that Brown engaged in an inappropriate relationship with a student, H.B., in 1997. Brown ate lunch with H.B. and other students and attended one of her travel team softball games even after being admonished by his principal "not to have anything to do" with H.B. *Id.* at 7, 8-9. Brown also admitted to phoning H.B. once a month during her freshman year in college. *Id.* at 8-9. ALJ Sanders also found that Brown's increment was withheld in 2001 because he had private discussions with students about a yearbook photo of himself he had submitted, thereby making students uncomfortable; he made a profane comment about the senior class trip; he was lax with lesson plans and he initiated conversations with students about whether there were rumors about him. *Id.* at 10-11.

The ALJ also allowed testimony to be admitted regarding Brown's relationship with a student, B.F. *Id.* at 11-13. ALJ Sanders found that Brown drove B.F. to school during the fall of 1996, at her mother's request and during one of those rides, Brown leaned in close to B.F. and touched her leg as if he were trying to kiss her. *Id.* at 12-13. ALJ Sanders also found that Brown had, on one occasion, sat himself next to B.F. in the library so that his left leg was touching her right leg. *Ibid.* The ALJ noted that

Brown also gave B.F. a sweater from Victoria's Secret. *Id.* at 12-13. The ALJ also considered and ultimately disallowed testimony that had been given regarding an incident in the winter of 2003 involving Brown and two female students, R.B. and P.W. *Id.* at 13-18. In that incident, after previously exchanging e-mails with Brown regarding her schedule and possibly doing some work for Brown, P.W. and her friend, R.B., showed up at Brown's house, where he allegedly gave them a bottle of alcohol. *Id.* at 17-20. Although ALJ Sanders did not admit the testimony regarding the incident, she did admit the e-mail exchange between Brown and P.W., noting that Brown had adequate notice of the messages. *Id.* at 18. The ALJ noted that P.W. had Brown's address, knew his phone number and visited his home with R.B. *Id.* at 20. ALJ Sanders also found that Brown used his personal e-mail address to contact a student and used a barely concealed curse word in the e-mail and tolerated a word of profanity in P.W.'s response. *Ibid.*

After assessing the evidence, ALJ Sanders concluded that the Board had proven that Brown had engaged in unbecoming conduct on a recurring basis. *Id.* at 23. The ALJ concluded that Brown had engaged in an unwanted intimacy both with B.F. and J.L.; had lost his increment in 2001 due to his "general difficulty with maintaining the overall requirement that teachers function as role models for the children in their charge;" had exchanged inappropriate e-mails with a student using his personal e-mail address; and engaged in a "troubling" relationship with H.B., even pursuing her outside the high school setting when she was in college. *Id.* at 22. All of these incidents led ALJ Sanders to conclude that revocation of Brown's certificates was warranted. *Id.* at 23. The parties submitted Exceptions and Reply Exceptions in the case.

In her Exceptions, the Deputy Attorney General (DAG) representing the Board agreed with the ALJ's finding that Brown engaged in unbecoming conduct but argued that the ALJ erred in excluding R.B.'s testimony regarding the incident in the winter of 2003. (DAG Exceptions, pp. 2-18). The DAG argued that the Order to Show Cause provided Brown adequate notice that his "inappropriate relationships with other female students" would be litigated at the hearing and that the evidence regarding the incident with P.W. and R.B. fit "within the broad allegations" of the Order to Show Cause. (DAG

Exceptions, p. 8). Moreover, the DAG also maintained that Brown was put on notice during the discovery process that these issues might be adjudicated during the hearing. (DAG Exceptions, pp. 9-17).

In his Exceptions, Brown argued that the ALJ erred when she allowed certain testimony and evidence in because they went beyond the scope of the Order to Show Cause. (Brown Exceptions, pp. 2-6). Brown claimed that his e-mail exchange with P.W. was written in 2003 and therefore not covered by the Order to Show Cause and that the incident with B.F. happened in the fall of 1996 and therefore should have been excluded as well. (Brown Exceptions, pp. 3-5). Brown also noted that the evidence related to his submission of a shirtless photo of himself for the yearbook was based on hearsay and bore no relation at all to the allegations in the Order to Show Cause. (Brown Exceptions, pp. 7-9). He also argued that there was no direct testimonial evidence to support ALJ Sanders' conclusion that he maintained an inappropriate relationship with H.B. (Brown Exceptions, pp. 9-10). Finally, Brown argued that the ALJ erred in finding that Brown placed his hand on J.L.'s leg as there was no evidence to corroborate her version of the events. (Brown Exceptions, pp. 11-12). Brown therefore asked that the ALJ's findings of fact and conclusions of law should be rejected and that the Order to Show Cause should be dismissed. (Brown Exceptions, p. 12).

In her Reply Exceptions, the DAG argued that ALJ Sanders correctly found that Brown's certificates should be revoked due to his "re-occurring incidences of unbecoming conduct." (Reply Exceptions, pp. 3-5). She also maintained that the ALJ correctly admitted B.F.'s testimony and the e-mail exchange between Brown and P.W., noting that Brown himself never challenged the credibility of B.F.'s testimony. (Reply Exceptions, pp. 5-17). The DAG also observed that ALJ Sanders did not focus on the photograph Brown gave in to the yearbook, but rather on his inappropriate conversations with students regarding the photograph. (Reply Exceptions, pp. 17-18). The DAG also noted that the ALJ correctly relied upon witness testimony regarding Brown's loss of increment as well as the reprimand letter he received. (Reply Exceptions, pp. 18-19). The DAG argued that ALJ Sanders appropriately relied on Brown's own admissions to support her findings regarding his inappropriate relationship with H.B. (Reply Exceptions, pp. 19-20). Finally, the DAG claimed that the ALJ's determination that Brown placed

his hand on J.L.'s leg was based on appropriate credibility determinations. (Reply Exceptions, pp. 20-21). The DAG therefore argued that the Initial Decision should be adopted "with the limited exception of ALJ Sanders' decision on the inadmissibility of student R.B.'s testimony regarding Respondent's conduct in 2003 related to the purchase and/or use of alcohol and marijuana." (Reply Exceptions, pp. 21-22).

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of June 21, 2012, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision and submissions, the Board voted to adopt the Initial Decision with modification.

As noted above, ALJ Sanders concluded that Brown had engaged in "re-occurring incidences of unbecoming conduct." (Initial Decision, slip op. at 23). She concluded that these behaviors warranted the revocation of his certificates. The Board agrees. "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. Brown repeatedly overstepped the proper boundaries that a teacher must maintain with students. He made more than one female student uncomfortable and, on at least one occasion, maintained an inappropriate relationship with a student in direct contravention of his superiors' orders. 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 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this case, there were repeated instances of excessive behavior that concerned the other adults around him.

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.

Where the Board differs with the ALJ, however, is regarding the testimony of R.B. and the e-mail exchange with P.W. In this instance, the Board specifically finds that the revocation decision is more than warranted based upon the testimonial evidence that was admitted at the hearing. Consequently, the Board need not reach the issue of the admissibility of R.B.'s testimony and makes no determination as to

the appropriateness of its exclusion. Moreover, the Board further finds that the e-mail exchange with P.W. also need not be considered in reaching a conclusion that revocation is the appropriate sanction here. Thus, as is the case with R.B.'s testimony, the Board makes no determination as to the appropriateness of including P.W.'s e-mails, nor does it make a determination as to their probative value. The Board therefore adopts the Initial Decision, with those modifications.

Accordingly, on June 21, 2012, the Board voted to adopt, with modification, the Initial Decision and ordered to revoke Brown's certificates. On this 21st day of September 2012, the Board formally adopted its written decision to adopt, with modification, the Initial Decision in this matter, and it is therefore ORDERED that Neil Brown's Teacher of Social Studies and Supervisor certificates be hereby revoked immediately. It is further ORDERED that Brown return his certificates to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

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Robert R. Higgins, Secretary  
State Board of Examiners

Date of Mailing:

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-38.4.