

STATE BOARD OF EXAMINERS DKT. NO. 1011-189;
OAL DKT NO. EDE 5595-11
COMMISSIONER APPEAL NO.2-3/13A

CHERYL SLOAN, :
 :
 APPELLANT, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 NEW JERSEY STATE BOARD OF :
 EXAMINERS, :
 :
 RESPONDENT. :
 _____ :

Appellant Cheryl Sloan challenges the determination of the New Jersey State Board of Examiners (Board of Examiners) that her actions warranted the suspension of her teaching certificates for one year. The Commissioner has reviewed the evidence and legal discussion presented in the proceedings before the Board of Examiners, as well as the parties' appellate briefs and appendices, and concurs with the Board of Examiners' determinations.

The material facts underlying this controversy were established by way of a hearing in the Office of Administrative Law (OAL) and were adopted by the Board of Examiners. Namely, on two separate occasions appellant allowed a personal friend, P.B., into the school building where she taught, so that he could lunch with her in her classroom. A student, B.B., asked to join them, and appellant facilitated B.B.'s participation in the lunches by way of notes excusing B.B. from class. Appellant did not have permission or authority from either B.B.'s parents or the school administrators to pull B.B. out of class or facilitate such a social encounter with P.B. In fact, although appellant did not know it, B.B.'s mother did not wish her daughter – a fifteen year old girl - - to be in contact with P.B. – a twenty-eight year old man. She had repeatedly advised PB to stay away from her daughter.

Based upon these findings, the administrative law judge (ALJ) who conducted the hearing in the OAL determined, *inter alia*, that appellant had violated school policy in failing to secure the principal's permission before allowing a visitor access to a student. The ALJ concluded from this that appellant's conduct had been unbecoming, in that it adversely affected the public's trust in school employees and confidence in school operations. However, the ALJ balanced appellant's long and previously unblemished record against the unbecoming conduct and recommended a three month suspension of appellant's teaching certificates.

The Board of Examiners concurred with the ALJ that appellant's conduct had been unbecoming, and that the appropriate remedy was a suspension of appellant's teaching certificates. However, it determined that the conduct warranted a more serious penalty.

More specifically, the Board of Examiners cited the established principle that teachers who are entrusted with the care of the public's children bear a heavy duty requiring "a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *IMO Tenure of Sammons*, 1972 *S.L.D.* 302, 321. By way of contrast appellant, in the Board of Examiner's view, "overstepped the proper boundaries that a teacher must maintain with students" and "exercised extremely poor judgment," placing B.B. "at possible risk by not following school policy." *In the Matter of the Certificates of Cheryl Sloan*, State Board of Examiners Docket No. 1011-189 (September 21, 2012) at 4. The Board of Examiners, therefore, ordered that appellant's certificates be suspended for a year instead of three months.

The arguments in appellant's papers do not persuade the Commissioner that the penalty imposed by the Board of Examiners was unsupported by the record. First, appellant contends that the Board of Examiners ignored the ALJ's factual findings. By way of example, appellant cites the ALJ's finding that some of B.B.'s testimony was unreliable and inconsistent with other testimony and evidence. The Commissioner notes that the testimony which was deemed by the ALJ to be

unreliable was B.B.'s assertion that appellant had let PB into her classroom through a fire door.¹ But this "finding" of unreliable testimony was not central to the issue of the propriety of appellant's conduct. What is significant is the undisputed fact -- which the ALJ did find -- that appellant "arranged for B.B. to be present at th[e] lunch meeting [between appellant and P.B.]" Initial Decision at 15.

Second, appellant maintains that the Board of Examiners ignored the ALJ's articulation of mitigation factors, such as appellant's long, unblemished record, the fact that appellant did not know about P.B.'s criminal record, the fact that appellant never left B.B. alone with P.B., and the fortunate circumstance that nothing 'inappropriate' happened. The Commissioner acknowledges that appellant's previously unblemished record is to be weighed in deciding upon a penalty for appellant's conduct. However, the other three factors mentioned by appellant do not really mitigate in her favor.

It is undisputed in the record that appellant arranged a meeting between a 15 year old student and a 28 year old male non-family member without the principal's knowledge or permission and, more importantly, without the knowledge or permission of B.B.'s parent. The purposes underlying the policies which appellant violated were fully in play. Common sense precludes any assumptions that there are good reasons for a fifteen year old girl to socialize with a 28-year-old man to whom she is not related. Any good reasons that might exist should properly be provided by the young girl's parent or guardian, and not be presumed by a teacher.

The result of appellant's conduct was that B.B. socialized with a man who has a criminal record, who paid improper attention to B.B. -- including inappropriate postings on B.B.'s facebook page and inappropriate requests to have her visit him overnight, and whose contact with B.B. had been forbidden by B.B.'s mother. This result is not an unforeseeable consequence of

¹ The ALJ also seemed doubtful about B.B.'s testimony that appellant had directly given B.B.'s teacher a note excusing her from class to lunch with appellant and P.B.

allowing contact between a teen-aged girl and fully grown man without the imprimatur of the teenager's parent. Thus, it is not significant that appellant may not have known about P.B.'s criminal record or the nature of P.B.'s history with B.B.

Finally, appellant's denial that she put B.B. at risk is unpersuasive. It is fortunate that B.B. was not left alone with P.B. or physically harmed. However, appellant undisputedly put B.B. at risk by facilitating 1) her absence from a class which she should have been taking and 2) her socialization with a grown man whose behavior toward her had not been wholesome. Again, even without the knowledge that P.B. had a criminal record and had interacted inappropriately with B.B., appellant should have understood that it was reckless to facilitate a meeting between a 15 year old girl and a 28 year old man who was not a family member. Nor is the fact that B.B. may have advocated for said social encounter relevant to this controversy. She is a minor.

In sum, the Commissioner finds that the evidence in the record supports the Board of Examiner's determination that appellant's unbecoming conduct warrants a one-year certificate suspension. Accordingly, the determination is affirmed and the appeal is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: February 12, 2014

Date of Mailing: February 14, 2014

² Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.