

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE LICENSES OF : STATE BOARD OF EXAMINERS
ELLEN RUBIN : ORDER OF REVOCATON
_____ : DOCKET NO. 410 - 09/96 - 104

At its meeting of September 26, 1996, the State Board of Examiners reviewed the tenure charges of incompetence, conduct unbecoming a teaching staff member and dereliction of duty proved against Ellen Rubin in a Commissioner of Education decision captioned In the Matter of the Tenure Hearing of Ellen Rubin, State-Operated School District of the City of Paterson, Passaic County, Oal Dkt. No. Edu 10753-93, Agency Dkt. No. 344-10/93, decided by the Commissioner September, 12, 1994, aff'd, State Board, March 6, 1996. Ms. Rubin holds Teacher of Elementary School and Reading Specialist licenses in the State of New Jersey.

At that meeting the State Board of Examiners voted to issue an Order to Show Cause to Ellen Rubin based upon the findings and conclusions of the tenure matter against her. The Order to Show Cause was mailed to Ms. Rubin by regular and certified mail on October 23, 1996. By way of reply, on November 6, 1996, Ms. Rubin forwarded a letter concerning a classroom incident she reported to the Division of Youth and Family Services (DYFS). On December 27, 1996, she was asked to provide a conforming response to the Order to Show Cause. On January 8, 1997, a second letter purporting to be an Answer to the Order to Show Cause was received from Ms. Rubin.

In the interim, the State Board of Education decided two cases which impacted on the hearing process conducted by the State Board of Examiners. The first case is captioned, In the Matter of the Certificates of Sheridan. The other is captioned, In the Matter of the Certificates of Vitola. Within these two cases, the State Board of Education determined that the State Board of

Examiners was required to amend its regulations in order to permit it to hear directly legal matters in which material facts are not in dispute. During the pendency of the revisions to the State Board of Examiner' regulations regarding its hearing process, all such hearings were held in abeyance. Said regulatory amendments were finally codified in May of 1997.

Pursuant to the newly recodified amendment to the hearing process as embodied in N.J.A.C. 6:11-3.6(a)1, on July 21, 1997 a hearing notice was mailed by regular and certified mail to Ms. Rubin. Said notice explained that it appearing that no material facts were in dispute, Ms. Rubin was provided an opportunity to offer legal argument on the issue of whether her removal from her tenured position constituted conduct unbecoming a certificate holder. On August 1, 1997, a response to the hearing notice was received from Ms. Rubin.

Ms. Rubin's response to the hearing notice submits a list of names of potential witnesses. She avers that the tenure proceedings did not include any of the witnesses testifying on her behalf. She requests that since her character witnesses were not called on her behalf before the Office of Administrative Law, the decision regarding conduct unbecoming a teacher should be nullified.

During the tenure proceedings, Ms. Rubin now claims, she also requested an opportunity to state under oath that she had reported to DYFS some serious written allegations by one of her students. She submits she was denied the opportunity to so state her position regarding those allegations during the tenure matter and consequently to testify about a significant situation which impacted negatively on her teaching career, as well as the objectivity of the proceedings. She would have the State Board of Examiners consider a letter from a co-teacher at School #4 in Paterson in this regard.

Her Answer to the Order to Show Cause similarly asks that the State Board of Examiners consider letters submitted from her fifth grade students regarding an incident involving an administrator, that she deemed to be reportable to DYFS. She claims this incident is pertinent to her situation, although it was not discussed at the tenure hearing. Upon review of this matter, she would hope and expect that the State Board of Examiners would not let the tenure proceedings impact on her teaching credentials and the opportunity to use them elsewhere.

Finally, her response to the Order to Show Cause submits she has been subjected to a lack of impartiality and objectivity and that her educational background and credentials have rendered her a successful teacher as evidenced by her employment before and since leaving the Paterson School District. She indicates she has been substituting in Morris County for the past three years and has been an adjunct professor at a private college in Morris County. She submits with this Answer several comments that she has received from administrators with whom she has worked within the past few years in support of her request that the State Board of Examiners not revoke her licensure.

At its meeting of October 9, 1997, the State Board of Examiners reviewed the charges against Ms. Rubin as well as her responses to the Order to Show Cause and the hearing notice. After its review, the State Board of Examiners determined that no material facts related to the tenure matter remained in contest, and that the matter could, therefore, proceed to a determination as to whether the charges levied against Ms. Rubin in the Order to Show Cause constitute conduct unbecoming a license holder pursuant to N.J.A.C. 6:11-3.6(a)1.

Upon careful and independent consideration of Ms. Rubin's responsive pleadings, and the Commissioner of Education and State Board decisions in the tenure matter noted supra, the State Board of Examiners finds that the charges found to be fact in the tenure proceedings

constitute conduct unbecoming a teaching staff member, sufficient to warrant revocation of respondent's teaching licensure pursuant to N.J.A.C. 6:11-3.6. The Board finds that Ms. Rubin lacks the competency required to be a teacher, as proven in her tenure hearing. She must not be permitted to remain in the classroom.

In so finding, it is noted that the responsive pleadings tendered by Ms. Rubin in this matter ask for consideration of character witnesses not entertained before the Office of Administrative Law. Ms. Rubin is thereby seeking to relitigate her tenure case; she is however, foreclosed from doing so by the principles of collateral estoppel. See T.W. v. A.W., 224 N.J.Super. 675 (App.Div. 1988). Moreover, testimony from character witness is unnecessary when the issue before the State Board of Examiners is legal one, to wit, whether the conduct at issue was unbecoming a certificate holder.

Accordingly, the State Board of Examiners finds that the charges proven against Ellen J. Rubin in the tenure matter against her, which led to a Commissioner decision dated September 12, 1994, and which was affirmed by the State Board of Education on March 6, 1996, warrant revocation of Ellen J. Rubin's Teacher of Elementary School and Reading Specialist licenses as of this 9th day October, 1997. It is further ORDERED that Ellen J. Rubin return her licenses to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within fourteen (14) days of receipt of this letter.

Secretary
State Board of Examiners

Date of Mailing: November 19, 1997

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

IBG:KHK:br:Rubinrv