

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
SAWSAN LABIB : ORDER OF SUSPENSION
_____ : DOCKET NO: 531-06/99-227

At its meeting of June 17, 1999, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Sawsan Labib from her tenured position with the State-Operated School District of the City of Jersey City for charges of excessive absenteeism. Labib currently holds a Teacher of the Handicapped certificate.

This case originated on August 16, 1996 when the State-Operated School District of the City of Jersey City certified tenure charges against respondent, Sawsan Labib. Labib was employed as a Teacher of the Handicapped. The district alleged that from the 1988-89 school year through the 1994-95 school year, Labib had been absent 15 days, 14 days, 14 days, 30 days, 15 days, 16 days and 94 days, respectively. Since Labib did not return to work during the 1995-96 school year, the district charged that she had been absent that entire year.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Margaret M. Hayden held a hearing on September 2, 1998 at which the parties stipulated to the facts. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on October 7, 1998.

In that decision the ALJ listed the stipulated facts, including a recounting of Labib's numerous absences for the 1988-89 through the 1995-96 school years. In addition, the parties agreed that Labib's absences had adversely affected her classroom

teaching performance and the continuity of instruction to her students. The facts also stated that Labib had been given numerous warnings about her absences. Additionally, Labib's salary increment was withheld for the 1994-95 school year. Finally, Labib claimed that she was permanently disabled and would never be able to return to her employment with the District in any capacity. (Initial Decision, slip op. at 3-5).

After considering the undisputed facts, ALJ Hayden found that Labib's absenteeism was "chronic and excessive and adversely affected the continuity of instruction to her students." (Initial Decision, slip op. at 5). The Judge therefore concluded that Labib's absenteeism warranted her removal from her tenured position. Ibid.

In a decision dated November 17, 1998, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Labib. The Commissioner agreed with the ALJ that the local board had proven its case of excessive absenteeism against Labib. (Commissioner's Decision, slip op. at 1). The Commissioner further found that the district had proven its efforts to fairly notify Labib of her absenteeism problem. (Commissioner's Decision, slip op. at 1). Accordingly, the Commissioner affirmed Labib's removal from her tenured employment with the State-Operated School District of the City of Jersey City and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Labib's certificates.

Thereafter, on June 17, 1999, the State Board of Examiners issued Labib an Order to Show Cause why her certificates should not be or suspended or revoked. The Order

was predicated on the charges of excessive absenteeism that had been proven in the tenure hearing.

The Order to Show Cause was mailed to Respondent by regular and certified mail on July 29, 1999. The Order provided that an Answer must be filed within twenty (20) days. Labib filed an Answer on August 19, 1999. In her Answer Labib stated that she was absent from work due to disabling injuries she sustained after three separate instances of student assault in March 1994, October 1994 and March 1995. (Answer, ¶ 3). She also claimed that her termination resulted solely from medically verified absences and that no unbecoming or fraudulent conduct had been proven against her. (Answer, ¶ 3). Labib admitted that the district had brought tenure charges against her that resulted in the loss of her tenured position. (Answer, ¶ 5).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on September 29, 1999, a hearing notice was mailed by regular and certified mail to Labib. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, respondent has 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 her offense warranted action against her certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

After receiving an extension of time, Labib responded to the Hearing Notice on November 18, 1999. In that response, Labib claimed that her absenteeism resulted from three separate incidents of student assault and that her evaluations and observations

established her record as a quality teacher. (Hearing Response, p. 1). She also stated that her absences were for legitimate reasons and medically verified. (Hearing Response, p. 2). Labib stated that she stipulated to her absences at her tenure hearing because she still could not return to work at that time. She added that she was never found guilty of unbecoming conduct and opposed the possible revocation of her teaching certificate. (Hearing Response, pp. 2-3). Finally, Labib argued that the Commissioner had no choice but to terminate her from her tenured position since she could not perform her teaching duties. She added, however, that her current inability to work did not preclude her from performing some type of educational work in the future. (Hearing Response, p. 3).

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Labib's excessive absenteeism and her subsequent loss of tenure constitute conduct for which the State Board of Examiners may suspend or revoke her certificate. At its meeting of May 11, 2000, the State Board of Examiners reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After reviewing her response, the Board of Examiners determined that no material facts related to Labib's offense were in dispute since she admitted to the absenteeism and her dismissal from her tenured position. Thus, Labib has not denied the charges in the Order to Show Cause and they are deemed admitted.

The State Board of Examiners must now determine whether Labib'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. In this instance, Labib's chronic and excessive absenteeism greatly affected the students in her charge. As the ALJ correctly observed "whatever the reason for the employee's absence, chronic and excessive absenteeism such as here obviously does not benefit the pupils or the community." Initial Decision, slip op. at 5-6. Furthermore, although Labib can document her absences dating from her injuries in 1994 and 1995, she has not explained her excessive absenteeism for the years prior to those. Thus, she cannot explain away all of her absences.

In determining the appropriate sanction in this case, the Board of Examiners is mindful that many of Labib's absences stemmed from injuries she sustained through no fault of her own. Her actions prior to that time, however, also indicate that she had a pattern of absenteeism about which the district had warned her. Labib's chronic and excessive absenteeism from her duty as a teacher has negatively impacted the education provided to the children of Jersey City by adversely affecting the continuity of instruction provided to those students. Accordingly, while the Board of Examiners does not believe that revocation is warranted here, some sanction is necessary to remind Labib of her professional responsibilities. Consequently, the Board of Examiners believes that a two-year suspension of Labib's Teacher of the Handicapped certificate is appropriate.

Accordingly, it is therefore ORDERED that Sawsan Labib's Teacher of the Handicapped certificate be suspended on this 11th day of May 2000 for a period of two years. It is further ORDERED that Labib return her certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: August 24, 2000

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

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