

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
LUCY LESTER : ORDER OF REVOCATION
_____ : DOCKET NO: 582-09/00-255

At its meeting of May 10, 2001, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Lucy Lester from her tenured position with the State-Operated School District of the City of Newark for charges of unbecoming conduct. Lester currently holds a Teacher of Elementary School certificate.

This case originated when the State-Operated School District of the City of Newark certified tenure charges against respondent, Lester. Lester was employed as an elementary school teacher. The district charged her with unbecoming conduct for participating in a scheme to defraud the State Health Benefits Program (SHBP). The district alleged that Lester had provided her name to Dr. Carl Lichtman, a licensed psychologist, so that he could submit false claims to the SHBP for treatment to Lester and her son that he never actually provided.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Maria Mancini La Fiandra heard testimony in June and July 1998. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on January 8, 1999.

In that decision ALJ La Fiandra found that Lester had provided Dr. Lichtman with vital personal information that he then used to submit claims to the SHBP. (Initial Decision, slip op. at 3-4). Lester never received any service from Lichtman, but she did

receive checks totaling over \$5585 from him. Lester negotiated all of those checks. (Initial Decision, slip op. at 4).

After considering all the testimony, ALJ La Fiandra found that Lester's conduct was improper. The Judge found that Lester had indeed known of Lichtman's scheme and had referred other colleagues to him, for which she was paid a "finder's fee." (Initial Decision, slip op. at 5-7). The ALJ therefore concluded that the Board had demonstrated that the charge of unbecoming conduct of a teaching staff member brought against respondent Lester was true. (Initial Decision, slip op. at 7).

In considering the appropriate penalty, the Judge examined Lester's heretofore unblemished record. That mitigating factor, however, did not outweigh Lester's improper conduct. (Initial Decision, slip op. at 7). Thus, based on her review of the entire record, the ALJ concluded that Lester's breach was too substantial to allow for her continued employment in the district. (Initial Decision, slip op. at 8). Consequently, the ALJ ordered Lester dismissed from her tenured employment.

In a decision dated February 25, 1999, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Lester. The Commissioner agreed with the ALJ that the local board had proven its case against Lester with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 18). The Commissioner was satisfied that the ALJ "considered all testimony and evidence and weighed it according to the credibility of the witnesses and the plausibility of its content and finds no basis whatsoever in the record before him for overturning such findings or credibility assessments of the ALJ who had the benefit of observing the witnesses firsthand." (Commissioner's Decision, slip op. at 18). Accordingly, the Commissioner

affirmed Lester's removal from her tenured employment with the State-Operated School District of the City of Newark and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Lester's certificate. Lester appealed the Commissioner's decision to the State Board of Education, which affirmed that decision on July 7, 1999. I/M/O the Tenure Hearing of Lucy Lester, Dkt. 18-99 (St. Bd. July 7, 1999) (slip op. at 1). Lester further appealed her case to the Appellate Division of the Superior Court of New Jersey. The Appellate Division affirmed her dismissal on May 19, 2000. I/M/O the Tenure Hearing of Lucy Lester, Dkt. No. A-7034-98T3 (App. Div. May 19, 2000).

Thereafter, on September 21, 2000, the State Board of Examiners issued an Order to Show Cause to Lester as to why her certificate should not be or suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Lester the Order to Show Cause by regular and certified mail on October 30, 2000. The Order provided that an Answer must be filed within 20 days. Lester filed an Answer on December 19, 2000. In her Answer Lester admitted that the district had brought tenure charges against her. She also stated that she was dismissed from her tenured employment as a result of the tenure hearing. (Answer, ¶ 5). In the remainder of her Answer, Lester described her unblemished record, her serving as a role model and mentor to children in Newark, and her positive evaluations. (Answer, ¶ 9). She also added that she had lost her job due to a lapse in judgment and that if allowed to retain her certificate she could redeem herself in the eyes of society. (Answer, ¶9).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on February 16, 2001, the Board sent Lester a hearing notice by regular and certified mail. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, Lester was offered an 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 certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Lester responded to the Hearing Notice on March 23, 2001. In that response, Lester claimed that she had already been punished for her offense by losing her tenured position. She reiterated that prior to this incident she had had an unblemished record and that the Board of Examiners should not automatically revoke her certificate (Hearing Response, pp. 1-3.) She also stated that she was entitled to show evidence of rehabilitation and did not need to wait until after an order of revocation might be imposed. (Hearing Response, p. 5.) She further argued that she was entitled to a hearing and that revocation of her teaching certificate under these circumstances would be a violation of her constitutional rights to liberty, due process and equal protection. (Hearing Response, pp. 7-9.)

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Lester's conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 10, 2001, the State Board of Examiners reviewed the charges and papers Lester filed in response to the Order

to Show Cause. After reviewing her response, the Board of Examiners determined that no material facts related to Lester's offense were in dispute since she admitted that she lost her tenure as a result of the tenure hearing. Thus, other than disputing whether there is just cause for suspension or revocation, Lester has not denied the charges in the Order to Show Cause. Nor did she deny that she endorsed and cashed the checks issued to her by Lichtman. Accordingly, her actions regarding this offense constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Lester's offense as set forth in the Order to Show Cause, provides 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. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). "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.

While Redcay and Sammons specifically address the issue of tenure, this Board is farsighted enough to realize that their principles apply equally in cases that involve the loss of certification. It is incumbent upon this Board to safeguard New Jersey's public schools from individuals who would undermine their stability. Removing inappropriate

individuals from only one district through the loss of tenure does not accomplish our goal. Moreover, it would send the wrong message, both to the children who deserve our protection and the many dedicated professionals who deserve our respect.

In fact, the Supreme Court of this State agrees that eliminating undesirable members from a profession is a necessary public service:

The purpose of a disciplinary sanction, whether it be a reprimand, suspension, or a disbarment, is not punishment, but maintenance of the integrity and purity of the bar, elimination of unfit persons from the practice of law, and vindication of public confidence in the bar and the administration of justice.

In Re Logan, 70 N.J. 222,227 (1976). The Court's words in Logan, while referring to attorneys, are pertinent to teachers as well. Revocation proceedings, when taken to the ultimate conclusion, allow the profession to maintain high standards as well as protecting the public from those teachers who ought not to be in a classroom.

Furthermore, in suspending or revoking a teaching certificate, the State Board of Examiners applies a standard that, although not the same as that used for tenure decisions, is just as exacting. It is a standard that differs only in scope, not depth. In other words, this Board's decisions regarding the loss of a certificate cannot be held to a more stringent standard than those of the Commissioner regarding the loss of tenure. Rather, the Board of Examiners' view is more "global" than local since it must make its decisions in the context of removing a teacher from all classrooms in the state and not just one district. See In the Matter of the Revocation of the License of Polk, 90 N.J. 550 (1982)(evidentiary standard to be used in an administrative proceeding regarding the revocation or suspension of a professional license is a fair preponderance of the evidence

and not a higher standard.) Thus, Lester's implication that the Board's revocation proceedings are somehow "automatic" is without merit.

Equally ludicrous is her argument that, by revoking her certificate, the Board of Examiners would be violating her property, due process and equal protection rights. As Lester herself notes, governmental revocation of a license is permitted; it just cannot be conducted in an arbitrary manner. (Hearing Response, pp. 8-9.) Lester has had the opportunity to submit all relevant evidence and argue the merits of her case. The Board has given full consideration to her arguments and has reviewed her submissions. Moreover, it has rendered an independent decision after this extensive review. There can be no dispute that Lester has been given every benefit of due process. To argue otherwise denies the reality of the hearing process.

Furthermore, notwithstanding Lester's contentions of rehabilitation and insistence that that evidence should be reviewed here, this is not the proper context for such considerations. The purpose of this proceeding is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation." See, In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners, 96 N.J.A.R. 2D (EDE) 1, 16 aff'd App. Div. Dkt. No. A-1246-96T5 (September 9, 1997) citing In the Matter of the Revocation of the Teaching Certificate of James Noll, State Bd. of Examiners decision (February 7, 1990). Thus, the fact that many members of her community hold Lester in high esteem, while laudable, has no bearing on the decision the Board of Examiners must make with regard to her certification. Lester's participation in a scheme meant to defraud the State Health

Benefits Program is not the type of activity that is consistent with role model status. Her intimate knowledge of all of Dr. Lichtman's actions is not essential. She knowingly gave him personal information, referred other colleagues to him and reaped the financial benefits of his scheme, however ephemeral. While her career prior to that point had been unmarked by disciplinary measures, it is the Board's opinion that this one act is a sufficient predicate for a considerable sanction. Therefore, the only proper response to Lester's breach is revocation.

Accordingly, it is therefore ORDERED that Lucy Lester's Teacher of Elementary School certificate be revoked on this 10th day of May 2001. It is further ORDERED that Lester return her certificate to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Acting Secretary
State Board of Examiners

Date of Mailing: March 25, 2002

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

JD:MZ:kb:Lucy Lester