

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF: STATE BOARD OF EXAMINERS
BARBARA THOMAS : ORDER OF REVOCATION
_____ : DOCKET NO: 0304-190

At its meeting of January 23, 2003, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Barbara Thomas from her tenured position with the State-Operated School District of the City of Paterson (hereafter "Paterson") for charges of unbecoming conduct and excessive absenteeism. In the Matter of the Tenure Hearing of Barbara Thomas, Docket No. 156-5/02 (Commissioner's Decision, October 9, 2002.) Thomas currently holds Speech Correctionist and Teacher of the Handicapped certificates.

This case originated on May 21, 2002 when Paterson certified tenure charges against respondent, Barbara Thomas. Paterson employed Thomas as a speech therapist. The district charged her with unbecoming conduct for engaging in a pattern of insubordinate conduct and excessive absenteeism. Thomas had acted in an irrational manner during the 2001-2002 school year and her superiors had directed her to undergo both a physical and psychiatric examination. She refused to undergo either exam. In addition, there were numerous instances when Thomas refused to meet with her supervisor to discuss concerns about her job performance. Furthermore, Thomas failed to call-in her absences, wore earplugs during the school day, covered an air vent in her room with a heavy chair seat and disconnected the PA wires in her classroom, thereby creating an unsafe condition for students and staff in that room. Paterson also alleged that Thomas refused to provide speech services to her assigned students, left the building without authorization and was absent 23 days between from January through April 2002.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). The case was later consolidated with a complaint Thomas had filed against Paterson alleging that it had reduced her salary in violation of her tenure rights. Administrative Law Judge (ALJ) Carol Cohen conducted an *ex parte* hearing since Thomas did not appear for the hearing even after having been instructed that her failure to do so would not stop the matter from proceeding.

The ALJ heard testimony on several days in July and August 2002. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on August 14, 2002. In that decision, ALJ Cohen found that Thomas had engaged in a pattern of insubordinate behavior, excessive absenteeism and unprofessional conduct and neglect of duties. (Initial Decision, slip op. at 12-13.)

After considering all the testimony, ALJ Cohen found that Thomas' conduct was improper. The Judge found that Paterson had proven its charges of unbecoming conduct and excessive absenteeism against Thomas. (Initial Decision, slip op. at 14.) Judge Cohen also noted that Thomas' absence in this case was "not the result of a substantiated medical problem, but rather a refusal on the part of Ms. Thomas to teach in a particular environment. Her actions were not in the best interest of her students and deprived them of the education and therapy that they were entitled to and deserved." (Initial Decision, slip op. at 14-15).

Based on her review of the entire record, the ALJ concluded that Thomas' breach was too substantial to allow for her continued employment in the district. (Initial Decision, slip op. at 14-15). Consequently, the ALJ ordered Thomas dismissed from her tenured employment.

In a decision dated October 9, 2002, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Thomas. The Commissioner agreed with the ALJ that the local board had proven its case against Thomas with regard to the tenure charges of unbecoming conduct and excessive absenteeism. (Commissioner's Decision, slip op. at 19). The Commissioner found that Thomas' actions had an adverse impact upon the execution of her duties as a speech therapist, "contributing to a discontinuity of instruction for the students assigned to receive services from her." (Commissioner's Decision, slip op. at 19.) Accordingly, the Commissioner affirmed Thomas' removal from her tenured employment with the State-Operated School district of the City of Paterson and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Thomas' certificates.

Thereafter, on January 23, 2003, the State Board of Examiners issued Thomas an Order to Show Cause as to why her certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct and excessive absenteeism that had been proven in the tenure hearing.

The Board sent Thomas the Order to Show Cause by regular and certified mail on July 10, 2003. Neither copy was returned, although the Office of Licensure and Credentials does not have a certified mail return receipt. The Order provided that an Answer must be filed within 20 days. Thomas did not file an Answer. The Board sent her a second notice on December 23, 2003 by certified and regular mail. The regular mail was not returned and the certified copy was returned as unclaimed. Once again, Thomas did not respond to the Order to Show Cause.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Thomas' conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. Since Thomas did not respond to the Order to Show Cause, the State Board of Examiners had no responsive pleading to consider in the hearing process. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding. N.J.A.C. 6A:9-17.7(c). Since Thomas' behavior as set forth in the Order to Show Cause is admitted, the Board of Examiners must now decide whether that constitutes a sufficient basis to act against her certificates pursuant to N.J.A.C. 6A:9-17.7(a). 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. 6A:9-17.5. 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. Thomas' behavior, both in failing to serve her students and refusing to comply with administrative directives was disruptive of the educational process and inimical to her charges. These actions, coupled with her unexcused, excessive absenteeism, provide the Board a sufficient predicate to take action against her teaching certificates. Thus, the only proper response to Thomas' behavior is revocation.

Accordingly, it is therefore ORDERED that Barbara Thomas' Speech Correctionist and Teacher of the Handicapped certificates be revoked on this 26th day of February 2004. It is further ORDERED that Thomas return her certificates to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 20 days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: _____, 2004

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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