

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
SANDRA KEARNEY : ORDER OF DISMISSAL
_____ : DOCKET NO: 0304-106

At its meeting of September 25, 2003, the State Board of Examiners voted to issue Sandra Kearney an Order to Show Cause. The Order was predicated on charges of unbecoming conduct. Kearney currently holds a Teacher of Elementary School certificate, issued in June 1976.

This case originated when the State-Operated School District of the City of Newark (hereafter Newark) certified tenure charges against Kearney. *In the Matter of the Tenure Hearing of Sandra Kearney*, Docket No. 407-12/02. The district alleged that Kearney had punched a student, threatened her with physical harm, directed inappropriate language at several students, slapped another student and used other methods of inappropriate intervention, including hitting students on the hand with a wooden block. The Division of Youth and Family Services (DYFS) also investigated five incidents of inappropriate physical contact. Although DYFS did not substantiate physical abuse in any of the incidents, it did express concerns about Kearney's behavior.

Although the tenure case was transferred to the Office of Administrative Law (OAL) for a hearing, the parties settled the matter before the hearing occurred. Kearney agreed to resign from her tenured position and the district agreed to withdraw the tenure charges. Thereafter, the Commissioner transmitted the matter to the State Board of Examiners. On September 25, 2003, the Board of Examiners issued Kearney an Order to Show Cause based upon the tenure allegations and DYFS' concerns regarding Kearney's conduct.

The Board sent Kearney the Order to Show Cause by regular and certified mail on February 9, 2004. The Order provided that Kearney's Answer was due within 20 days. Kearney filed an Answer on March 2, 2004. In her Answer, Kearney admitted that tenure charges had been brought against her. (Answer, ¶¶ 1-5). She also added that the tenure charges and the attendant tenure investigation was biased and flawed. (Answer, ¶ 6). She stated that she had never slapped a student but rather, had been injured by that student and that her actions were in self defense. (Answer, ¶ 6). She further stated that her actions did not present just cause to take action against her certificate. (Answer, ¶ 6). Finally, Kearney stated that there were material factual differences and disputes between the Order to Show Cause and her reply and demanded that the case be sent to OAL for a hearing. (Answer, ¶ 6).

The Board of Examiners transmitted the case to the OAL on April 27, 2004. Administrative Law Judge (ALJ) Sandra Ann Robinson heard testimony on several days in August 2005 and after both parties submitted post-hearing briefs, the record closed. ALJ Robinson issued her Initial Decision on August 22, 2005. *In the Matter of the Certificate of Sandra Kearney*, Docket No. EDE 03866-04 (August 22, 2005).

In that decision, ALJ Robinson stated that out of the four incidents at issue in the hearing, the State did not present evidence regarding three of the incidents. (Initial Decision, slip op. at 4). The ALJ held that Kearney had hit a student in the face inadvertently after the student had caused Kearney's keys to hit her in the breast, thereby cutting her breast and nipple. (Initial Decision, slip op. at 4). Kearney threw up her arm in reaction to the pain and her hand hit the student who was standing under her. (Initial Decision, slip op. at 4). The ALJ found that the testimony presented did not establish that

Kearney was “guilty of violating school policy and State law by engaging in corporal punishment, physical abuse or any conduct unbecoming via ... slinging her hand in the student’s face after her body experienced an injury.” (Initial Decision, slip op. at 8). The ALJ noted that “testimony was presented for only one of four tenure charges.” (Initial Decision, slip op. at 9). According to the ALJ, the preponderance of the evidence submitted regarding that one charge shows that Kearney “was injured and medically treated as a result of the incident in question....” (Initial Decision, slip op. at 9-10).

The ALJ found that the preponderance of the testimony the Board of Examiners presented “did not prove physical abuse or corporal punishment amounting to conduct unbecoming,....” (Initial Decision, slip op. at 12). Accordingly, ALJ Robinson concluded that Kearney’s conduct did not rise to a level which warranted action against her teaching certificate. (Initial Decision, slip op. at 12). Consequently, ALJ Robinson dismissed the petition with prejudice. (Initial Decision, slip op. at 12.)

On September 6, 2005, the Deputy Attorney General (DAG) representing the State Board of Examiners filed exceptions to the ALJ’s decision. In her exceptions, the DAG did not challenge the ultimate conclusion of the ALJ that the State did not prove physical abuse or corporal punishment amounting to conduct unbecoming. Rather, the DAG urged the Examiners to modify the reasoning of the Initial Decision finding that Kearney did not engage in conduct unbecoming a teacher because there was no pattern of unjustified or inappropriate physical intervention established. (Exceptions, pp. 1-2).

In reply exceptions, Kearney argued that the ALJ specifically found there was no pattern of inappropriate physical conduct in this case because that was how the tenure

charges were framed initially. (Reply Exceptions, pp. 1-2). Kearney therefore requested that the Initial decision not be modified. (Reply Exceptions, p. 2).

At its meeting of November 3, 2005, the State Board of Examiners reviewed the Initial Decision, exceptions and reply exceptions. After full and fair consideration of all the submissions, the Board voted to adopt the Initial Decision. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. Thus, as the only evidence presented in the hearing went to the incident involving Kearney's alleged corporal punishment and the ALJ found that corporal punishment was not established, there is no evidence to sustain the Order to Show Cause.

Accordingly, it is therefore ORDERED that the Initial Decision in this matter is adopted. It is further ORDERED that the Order to Show Cause in this matter is hereby dismissed with prejudice.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: NOVEMBER 15, 2005

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