

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
LAURIE ROSEN	:	ORDER OF REVOCATION
	:	DOCKET NO: 707-04/02

At its meeting of April 11, 2002, the State Board of Examiners (Examiners) reviewed a tenure decision the Commissioner of Education had referred captioned *In the Matter of the Tenure Hearing of Laurie Rosen*, Dkt. No. 478-10/98 (November 17, 1999). The Hoboken Board of Education (Hoboken) had certified tenure charges against Rosen alleging that she had engaged in conduct unbecoming a teaching staff member. Hoboken alleged that Rosen had physically mistreated a ten-year-old special education student, by kicking him, hitting him in the head with an open hand and hitting his head against some wooden dividers in the gymnasium. Rosen currently holds a Teacher of Social Studies certificate, issued in June 1984, Teacher of Elementary School and Teacher of the Handicapped certificates, both issued in July 1984, a Substance Awareness Coordinator Certificate of Eligibility, issued in December 2002, and a Learning Disabilities Teacher-Consultant certificate, issued in July 2003.

Criminal charges were also filed against Rosen. The Hudson County Prosecutor had charged Rosen with endangering the welfare of a child, child abuse and simple assault arising out of the same incident. She was allowed to enter a Pre-Trial Intervention Program (PTI). As a prerequisite of her admission into PTI, Rosen had to resign from her tenured position. In a decision dated November 17, 1999, the Commissioner dismissed the tenure matter as moot since Rosen had resigned from her tenured position. The Commissioner transmitted the matter to the Examiners for any action against Rosen's certificates that it deemed appropriate.

At its April 11, 2002, meeting, the Examiners voted to issue Rosen an Order to Show Cause as to why her certificates should not be suspended or revoked. The Examiners mailed the Order to Rosen by regular and certified mail on May 30, 2002. The Order provided that Rosen had thirty days to respond. Rosen responded to the Order on June 18, 2002. In that Answer, she denied all of the allegations of wrongdoing concerning her special education student. (Answer, ¶¶ 2, 3). Notwithstanding Rosen's denials, the Examiners found probable cause to consider the suspension or revocation of her certificates.

The Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Stephen Weiss heard testimony on March 8 and 9, 2005. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on July 27, 2005. *State Board of Examiners v. Laurie Rosen*, Dkt No. EDE 9197-02 (July 27, 2005).

Before ruling on the merits of the case, ALJ Weiss considered the threshold legal issue of whether the Order to Show Cause needed to be dismissed because there was a prior determination from an unemployment Appeal Tribunal on the merits in Rosen's favor. (Initial Decision, slip op. at 10). In that proceeding, the tribunal rejected Hoboken's argument that Rosen was not entitled to unemployment benefits since she left her job voluntarily without good cause due to her discharge for misconduct. (Initial Decision, slip op. at 10). ALJ Weiss rejected Rosen's argument that the decision regarding her unemployment governed the matter before him. (Initial Decision, slip op. at 10). Rather, the ALJ noted that this proceeding involved whether Rosen engaged in conduct unbecoming to warrant action against her teaching certificates, and not the issue

of whether she had engaged in misconduct sufficient to disqualify her from receiving unemployment compensation benefits. (Initial Decision, slip op. at 10-11). Moreover, the prior decision had no applicability here since the Examiners was not a party to the unemployment proceeding. (Initial Decision, slip op. at 10).

As to the merits of the Examiners' case, ALJ Weiss found that the Examiners' witness, Mary Sanchez had provided credible testimony regarding Rosen's actions. (Initial Decision, slip op. at 12). ALJ Weiss found that Rosen had engaged in unbecoming conduct by abusing her special education student, C.C. The ALJ believed that C.C. "had pushed Rosen to the limits of her tolerance." (Initial Decision, slip op. at 13). The ALJ found that Rosen's frustration over C.C.'s failure to conform his behavior to her expectations, had led her to hit him, pull his hair, bang his head against a wall and kick him. (Initial Decision, slip op. at 13). The ALJ declared that it was irrelevant whether, as Rosen claimed, C.C. was the aggressor: "As a special education teacher of many years experience Rosen should have known better and her failure to take alternative, acceptable corrective action short of striking the child clearly constituted unbecoming conduct and corporal punishment." (Initial Decision, slip op. at 13).

In considering the appropriate penalty, ALJ Weiss held that Rosen's actions were unacceptable under any circumstances. (Initial Decision, slip op. at 14). Therefore, ALJ Weiss determined that the only appropriate penalty for Rosen's actions must be the revocation of her certificates. (Initial Decision, slip op. at 14).

Rosen submitted exceptions to the Initial Decision and the Deputy Attorney General (DAG) representing the Examiners submitted reply exceptions. In her exceptions, Rosen again argued that the Order to Show Cause should be dismissed

because of the prior ruling in her favor by the Appeal Tribunal. (Exceptions, pp. 1-5). She argued that since both the Appeal Tribunal and the Examiners were involved in examining her behavior, the Examiners should defer to the Department of Labor on that issue. (Exceptions, p. 4). Moreover, Rosen argued that the doctrine of *collateral estoppel* was applicable here because the factual issue of her misconduct was “fully and fairly litigated in the unemployment proceeding.” (Exceptions, p. 5). Rosen also attacked the credibility of the witnesses who testified against her in the revocation hearing and argued that the Examiners’ case was based “on the uncorroborated testimony of one witness.” (Exceptions, p. 6). Rosen stated that the witness was unaware of Rosen’s training, C.C.’s behavioral problems and his physical behavior in the moments prior to the incident at issue. (Exceptions, p. 8). Finally, Rosen argued that the evidence presented at the hearing was insufficient to establish that she had engaged in unbecoming conduct. (Exceptions, pp. 9-11). Rosen therefore argued that the Initial Decision should be rejected and the Order to Show Cause be dismissed. (Exceptions, p.11).

In response, the DAG argued that neither *res judicata* nor *collateral estoppel* applied to this matter since the identity of the issues and the identity of the parties were different from the unemployment matter and the issue litigated before the unemployment tribunal was different from the issue before the Examiners. (Reply, Exceptions, p. 1). Moreover, the DAG noted that the ALJ’s credibility determinations were made based on the content of the record and his personal observation of the witnesses during the hearing. (Reply Exceptions, p. 2). The DAG also stated that the ALJ also questioned the witnesses to further clarify certain aspects of their testimony. (Reply Exception, p. 2). Thus, according to the DAG, the ALJ correctly held that the record supported the version

of events as reported by the Examiners' witness. (Reply Exceptions, p. 2). The DAG stated that the ALJ's decision was correct, supported by the weight of the evidence and should be adopted. (Reply Exceptions, p. 2).

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of September 22, 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. The Board agrees that because it was not a party to the prior Appeal Tribunal proceeding, that determination has no relevance here. Moreover, the issue at stake in that context, namely Rosen's eligibility for unemployment benefits, is not akin to the weightier issue of whether Rosen's conduct warrants action against her teaching certificates. Thus, as the DAG noted, neither *res judicata* nor *collateral estoppel* apply to this matter.

Furthermore, 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. The ALJ had no doubt that Rosen had abused her student as described by the Examiners' witness. Clearly, Rosen's actions amounted to conduct unbecoming a teacher, pursuant to *N.J.A.C. 6A:9-17.5*. Accordingly, the remaining decision for this Board is one of penalty.

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 Bd. of Educ.*, 130 N.J.L. 369, 371 (Sup. 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. The Board of Examiners agrees with the ALJ that Rosen's behavior is unacceptable under any circumstances. Moreover, as an experienced special education teacher she failed miserably in upholding her duty to protect our most vulnerable student population. Thus, the Board agrees with the ALJ that the only appropriate response to Rosen's breach is the revocation of her certificates.

Accordingly, it is therefore ORDERED that Laurie Rosen's Teacher of Social Studies, Teacher of Elementary School and Teacher of the Handicapped certificates be revoked on this 22nd day of September 2005.¹ It is further ORDERED that Laurie Rosen return her certificates to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: OCTOBER , 2005

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

¹Subsequent to the Examiner's issuance of the Order to Show Cause, dated April 11, 2002, Rosen obtained two additional certificates: a Substance Awareness Coordinator Certificate of Eligibility and a Learning Disabilities Teacher Consultant certificate. The Board reserves the right to take future action against those certificates.