

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
LARRY SCHUMACHER : ORDER OF SUSPENSION
_____ : DOCKET NO: 766-02/03

At its meeting of February 27, 2003, 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 Larry Schumacher*, Dkt. No. 341-7/98 (November 22, 2002). The State-Operated School District of the City of Newark (Newark) had certified tenure charges against Schumacher alleging that he had engaged in conduct unbecoming a teaching staff member. Newark alleged that while employed full-time as a guidance counselor in the district, Schumacher had also accepted a position as the Director of Recreation and Cultural Affairs for the City of East Orange. As a result of taking on the second position, Schumacher started to abuse his employee sick time. During a five-month period, Schumacher used a total of 58 sick days. His pattern was to utilize four consecutive sick days and sign in at work for a fifth day, thus avoiding the district's requirement of submitting a medical certificate for the use of five consecutive sick days. Schumacher currently holds a Student Personnel Services certificate, issued in January 1975.

Criminal charges were also filed against Schumacher. He was allowed to enter a Pre-trial Intervention Program (PTI). As a prerequisite of his admission into PTI, Schumacher had to resign from his tenured position. In a decision dated November 22, 2002, the Commissioner dismissed the tenure matter as moot since Schumacher had resigned from his tenured position. The Commissioner transmitted the matter to the Examiners for any action against Schumacher's certificate that it deemed appropriate.

At its February 27, 2003, meeting, the Examiners voted to issue Schumacher an Order to Show Cause as to why his certificate should not be suspended or revoked. The Examiners

mailed the Order to Schumacher by regular and certified mail on March 26, 2003. The Order provided that Schumacher had 30 days to respond. Schumacher responded to the Order on April 16, 2003. In that Answer, he alleged that the district was aware that he had taken on a second position and that he had applied for a leave and had not received any response to his leave request. (Answer, ¶ 5D). Notwithstanding Schumacher's denials, the Examiners found probable cause to consider the suspension or revocation of his certificate.

The Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Carol Cohen heard testimony on April 27 and 28, 2005. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on July 19, 2005. *State Board of Examiners v. Larry Schumacher*, Dkt No. EDE 07396-03 (July 19, 2005).

In that decision, ALJ Cohen found that Schumacher had admitted to using his sick time when he was not sick and called out sick at Newark four out of five days per week for a period of several months. (Initial Decision, slip op. at 17). The ALJ also found that during this time, Schumacher was holding the position of Recreation Director at east Orange. (Initial Decision, slip op. at 13). ALJ Cohen also held that other professionals at the Newark school district had used their sick time prior to retirement and the administration had "looked the other way." (Initial Decision, slip op. at 19). She further found that Schumacher "had played the system" and that had he retired, the district could have filled his position temporarily with a retired counselor. (Initial Decision, slip op. at 19). The ALJ was not persuaded by Schumacher's argument that he was performing a service for the district by coming in to work one day per week. Rather she found his claim not credible stating "[t]here is no way he could be effective counseling 360 students while working one day per week." (Initial Decision, slip op. at 19). ALJ Cohen also noted that Schumacher's actions were not defensible because the district did not act to approve

his leave request. (Initial Decision, slip op. at 20). Instead, the ALJ found that it was his responsibility to follow up on his request for a leave of absence and that he failed to do so once he realized that he could be paid by both jobs. (Initial Decision, slip op. at 20). The ALJ found that Schumacher's behavior "was not something that we would want children to emulate." (Initial Decision, slip op. at 20).

In considering the appropriate penalty, ALJ Cohen weighed several factors. (Initial Decision, slip op. at 21). She noted that Schumacher appeared to lack remorse, he had denied he had done anything wrong and he asserted that he did not hide anything from the district. (Initial Decision, slip op. at 21). However, the ALJ also noted that it was common at the Newark district to use sick time other than for its prescribed purpose and that the administration was aware of Schumacher's actions and had not done anything to address the situation. (Initial Decision, slip op. at 21). Finally, the ALJ discussed Schumacher's years of service to the district and his positive influence on students. (Initial Decision, slip op. at 21). On balance, the ALJ concluded that suspension was the appropriate penalty in this matter. (Initial Decision, slip op. at 21). Consequently, the ALJ ordered a five-year suspension of Schumacher's certificate. (Initial Decision, slip op. at 22).

The Deputy Attorney General (DAG) representing the Examiners submitted exceptions to the Initial Decision and Schumacher submitted reply exceptions. In her exceptions, the DAG argued that Schumacher's conduct "along with his failure to appreciate the wrongfulness of such behavior" warranted revocation rather than the suspension of his certificate. (Exceptions, p. 2). The DAG argued that with a revocation, Schumacher would have to prove rehabilitation if he applied for another certificate in the future. (Exceptions, p. 3). By contrast, with only a suspension, Schumacher's certificate would be reinstated automatically at the end of the suspension period. (Exceptions, p. 3). The DAG argued that since Schumacher failed to

appreciate the wrongfulness of his conduct this long after abusing his sick leave, it was unlikely he would do so after a five-year suspension. (Exceptions, pp. 3-4). The DAG therefore argued that the Examiners should modify the penalty the ALJ had imposed. (Exceptions, p. 5).

In response, Schumacher argued that the ALJ's conclusion regarding penalty was within her discretion after reviewing the evidence and the testimony. (Reply Exceptions, p. 2). He reiterated that his actions were not secretive and were known to his principal and colleagues. (Reply Exceptions, p. 2). Schumacher stated that the ALJ had recognized that in his career, Schumacher had greatly benefited students and had served as a positive role model for inner city children. (Reply Exceptions, p. 3). Schumacher stated that a five-year suspension was a severe penalty. (Reply Exceptions, p. 3).

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. 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. Schumacher's abuse of his sick time leaves no doubt that he clearly has engaged in conduct unbecoming a teacher, one of the grounds for revocation or suspension of a teaching certificate. *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 while Schumacher’s behavior is not conduct that students should emulate, some blame must be accepted by the district that allowed this behavior to continue unchecked because of a prior acceptance of this practice. Moreover, Schumacher had an unblemished record prior to this incident and previously had proven himself a positive influence to many students. Thus, the Board agrees with the ALJ that a five-year suspension is a proper response to Schumacher’s breach.

Accordingly, it is therefore ORDERED that Larry Schumacher’s Student Personnel Services certificate be suspended for a period of five years beginning on this 22nd day of September 2005. It is further ORDERED that Larry Schumacher return his certificate 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 13, 2005

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