

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
WALTER BARNES : ORDER OF DISMISSAL
_____ : DOCKET NO: 0304-288

At its meeting of June 10, 2004, the State Board of Examiners voted to issue Walter Barnes an Order to Show Cause. The Order was predicated on charges of unbecoming conduct. Barnes currently holds Teacher Coordinator of Cooperative Industrial Education and Teacher Coordinator of Business Education certificates, both issued in October 1981 and a Teacher of the Handicapped certificate, issued in April 1990.

This case originated when the Division of Youth and Family Services (DYFS) provided information to the Board of Examiners regarding Barnes. DYFS had investigated allegations of abuse/neglect-lack of supervision against Barnes. Barnes had allegedly allowed three students to beat another student while he was supervising their physical education class. After conducting its investigation, DYFS substantiated the charges of abuse/neglect-lack of supervision against Barnes. Thereafter, on June 10, 2004, the Board of Examiners issued an Order to Show Cause to Barnes based upon the substantiated allegations in the DYFS report.

The Board sent the Order to Show cause to Barnes by regular and certified mail on July 20, 2004. The Order provided that Barnes' Answer was due within 30 days. Barnes filed his Answer on August 18, 2004. In that Answer, Barnes denied that he had engaged in abuse or neglect of the students. (Answer, ¶ 3). He also stated that he had demanded and received a plenary hearing at the Office of Administrative Law (OAL) challenging the DYFS allegations. (Answer, ¶ 4). Barnes asked that the Order to Show Cause be dismissed with prejudice. (Answer, ¶ 6).

The Board of Examiners transmitted the case to the OAL. Administrative Law Judge (ALJ) John Schuster III heard testimony on September 21, 2005. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on December 14, 2005. *In the Matter of the Certificates of Walter Barnes*, OAL Dkt. No. EDE 8948-04 (December 14, 2005).

In that decision, ALJ Schuster found that the ALJ in the prior DYFS hearing concluded that Barnes was neglectful because he did not take immediate action in halting an assault on an emotionally disturbed student by other students in the physical education class he was supervising. (Initial Decision, slip op. at 4). In addition, ALJ Schuster found that Barnes' main witness, his instructional aide Paul Reagle, was a credible witness. (Initial Decision, slip op. at 4). Reagle testified that Barnes was always professional and described the incident in question as normal roughhousing and horseplay and "definitely not fighting or conduct intended to harm." (Initial Decision, slip op. at 4). The ALJ determined that Barnes was supervising two separate groups of students in different parts of the weight room. (Initial Decision, slip op. at 4). When Reagle entered the room, Barnes' attention was directed toward one group. (Initial Decision, slip op. at 4). Reagle informed him that one group was roughhousing and Barnes immediately halted their activity so that no harm could occur. (Initial Decision, slip op. at 4).

ALJ Schuster found that Barnes was a dedicated teacher who would not knowingly permit the assault of one student by another. (Initial Decision, slip op. at 5). He also added that the Board of Examiners had presented no testimony or evidence other than the decisions in the DYFS matter "to indicate any aggravating factors exist which would warrant a greater penalty than the one imposed here." (Initial Decision, slip op. at 5). After considering all the testimony, ALJ Schuster held that he had to decide whether to revoke or suspend Barnes' certificates based

only upon the record in the case before him. (Initial Decision, slip op. at 6). That record consisted of the witness testimony and the initial decision in Barnes' DYFS hearing. (Initial Decision, slip op. at 6). The ALJ found that if there was a conflict between the DYFS decision and the testimony presented to him he would give greater weight to the testimony if it was credible. (Initial Decision, slip op. at 6-7). Using that standard, the ALJ held that although a student under Barnes' supervision received some injury, it was not through an assault, but rather through roughhousing and horseplay. (Initial Decision, slip op. at 7). Thus, although the ALJ determined that Barnes had exercised poor judgment in not placing both groups in a position where he could supervise them simultaneously, his conduct was not intentional or egregious. (Initial Decision, slip op. at 7-8). The ALJ stated that had the case come before him immediately, he would have imposed a six-month suspension of Barnes' teaching certificates. (Initial Decision, slip op. at 8). However, since "respondent has stopped teaching for six times longer than I would have imposed at the time of the incident, I **FIND** he has been sufficiently sanctioned and no further suspension is warranted." (Initial Decision, slip op. at 8) (emphasis in original). Accordingly, the ALJ dismissed the Order to Show Cause. (Initial Decision, slip op. at 9).

In response to the Initial Decision, the Deputy Attorney General (DAG) representing the Board of Examiners filed exceptions challenging the ALJ's dismissal of the Order to Show Cause. The DAG argued that the ALJ should not have rendered new findings of fact, but rather, was bound by the findings of negligence against Barnes as determined in the DYFS hearing. (Exceptions, pp. 6-9). Furthermore, the DAG stated that the record did not support a finding that the student altercation was minor and did not require intervention. (Exceptions, pp. 9-13). Rather, the DAG stated that the students' behavior was inappropriate and should have been

stopped. (Exceptions, p. 11). According to the DAG, Barnes “failed to adequately supervise the students and thus did not intervene during an incident in which a student suffered physical harm.” (Exceptions, p. 11). Finally, the DAG also argued that ALG Schuster erred when he dismissed the Order to Show Cause even though he determined that Barnes had exercised poor judgment. (Exceptions, pp. 13-17). The DAG said the ALJ’s conclusion that no action was warranted against Barnes’ certificates was in error because although Barnes did not mean to cause harm to any student, nevertheless, harm did occur due to his neglect. (Exceptions, pp. 13-14.) The DAG also objected to the ALJ’s determination that Barnes was adequately penalized for his conduct by his self-imposed removal from teaching for three years. The Deputy argued that this was not a true penalty because although Barnes was not teaching at the time he “retained the legal ability to seek employment as a teacher during this period.” (Exceptions, p. 16).

In his reply exceptions, Barnes argued that contrary to the DAG’s assertions, there were facts that were in dispute, including the injured student’s actions after the incident, which should be litigated. (Reply Exceptions, pp. 1-2). Barnes also argued that his behavior was not sufficiently flagrant to warrant the suspension or revocation of his certificates. (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 March 30, 2006, 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 the ALJ correctly reviewed the evidence and testimony before him. The fact that the ALJ determined that Barnes exercised poor judgment is not inconsistent with the findings of the DYFS hearing.

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 Reagle was a credible witness who affirmed Barnes' abilities and dedication as a teacher. The Board of Examiners agrees with the ALJ that Barnes' behavior, while indicative of poor judgment, does not warrant either the suspension or revocation of his certificates.

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*. In this case because there has been no finding that Barnes has engaged in conduct unbecoming a teacher or the presentation of "other just cause" the Board will take no action against his certificates.

Accordingly, pursuant to the Board of Examiners' vote, it is therefore ORDERED that the Order to Show Cause issued to Walter Barnes seeking to suspend or revoke his Teacher Coordinator of Cooperative Industrial Education, Teacher Coordinator of Business Education and Teacher of the Handicapped certificates be dismissed effective this 4th day of May 2006.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: MAY 10, 2006

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