

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
L.H.¹ : ORDER OF DISMISSAL
_____ : DOCKET NO: 0506-315

At its meeting of January 18, 2007, the State Board of Examiners reviewed an investigative report issued by the Department of Children and Families' (DCF) Institutional Abuse Investigation Unit (IAIU) that substantiated physical abuse allegations against L.H. According to the report, when a student was being disrespectful to L.H. in class, a verbal confrontation ensued. After the yelling escalated, L.H. allegedly grabbed the student around the neck and choked him. Two other students then intervened and separated the parties. At the February 22, 2007 meeting the Board of Examiners issued L.H. an Order to Show Cause why his certificates should not be revoked or suspended. L.H. currently holds a Teacher of Health and Physical Education certificate, issued in July 1975 and a Teacher of the Handicapped certificate, issued in August 1996.

The Board sent L.H. the Order to Show Cause by regular and certified mail on March 5, 2007. The Order provided that L.H.'s Answer was due within 30 days. L.H. filed an Answer on March 19, 2007. In his Answer L.H. admitted that there was a pending appeal of a DCF finding against him. (Answer, ¶ 3). He added that the certification case should not proceed until that appeal was resolved. (Answer, ¶ 4.)

Upon receipt of L.H.'s Answer, the Board transmitted the case to the Office of Administrative Law (OAL). On November 21, 2007 the OAL entered an order sealing the record, consolidating the two matters and declaring that DCF had the predominant interest in determining whether abuse had occurred. Chief Administrative Law Judge

¹ As the record in this matter was sealed, the respondent will be referred to by initials.

(ALJ) Laura Sanders heard testimony on March 30, 2009. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on May 11, 2009. *Department of Children and Families-Legal Affairs Unit, Institutional Abuse Investigation Unit v. L.H. and In the Matter of the Certificates of L.H.*, Dkt. Nos. HSV 08249-07 and EDE 04480-07 (May 11, 2009) (Consolidated).

In that decision ALJ Sanders found that while acting as a substitute in a health class, L.H. had asked a student, K.B., to sit down. (Initial Decision, slip op. at 6.) K.B. cursed at L.H. and accidentally spit on him. (Initial Decision, slip op. at 6.) When L.H. stepped back on a narrow platform in the classroom auditorium and demanded to know what K.B. had said, K.B. stepped forward, and “deliberately cursed into L.H.’s face, deliberately spraying him with spittle.” (Initial Decision, slip op. at 6.) L.H. then grabbed both sides of K.B.’s collar and pulled the collar toward the student’s chin. (Initial Decision, slip op. at 6.) Two students then pulled L.H. and K.B. apart. (Initial Decision, slip op. at 6.)

After considering all the testimony and assessing witness credibility, ALJ Sanders concluded that “in this narrow and particularized instance, L.H. employed limited self-defense commensurate with the level of attack....” (Initial Decision, slip op. at 9). Judge Sanders noted that L.H. was not using force to compel obedience and had, in fact, already taken a step back which only made K.B. more aggressive. (Initial Decision, slip op. at 9.) The ALJ concluded that since L.H. “had no retreat space left because of the step down,” his use of the shirt hold in this instance “did not fall within the statutory meaning of child abuse.” (Initial Decision, slip op. at 9.) ALJ Sanders further found that L.H.’s actions

“do not constitute unbecoming conduct, such that action against his certificates is warranted.” (Initial Decision, slip op. at 9-10.)

In a decision dated June 16, 2009, the Executive Director (ED) of the DCF concurred with ALJ Sanders’ conclusion that L.H. had acted in self-defense and reversed the IAIU’s substantiation of abuse. (DCF Final Decision, slip op. at 5-6). The ED found that “there was insufficient risk created by L.H.’s actions to be considered a substantial risk of harm....” (DCF Final Decision, slip op. at 5). The ED also held that the ALJ’s assessment of L.H.’s credibility was not “arbitrary, capricious, or unreasonable.” (DCF Final Decision, slip op. at 5-6.) Accordingly, the ED reversed the finding of abuse and ordered that L.H.’s name not be placed on the Central Registry. (DCF Final Decision, slip op. at 6.)

Thereafter, the matter was transmitted to the Board of Examiners for its decision with regard to L.H.’s teaching certificates. Neither L.H. nor the Deputy Attorney General (DAG) representing the Board filed exceptions to the ALJ’s Initial Decision.

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of July 28, 2009, the Board reviewed the Initial Decision. After full and fair consideration of the decision and the issues raised therein, 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. As noted above, ALJ Sanders found that L.H.’s physical contact with K.B. was initiated as a last resort and as a measure of self-defense. (Initial Decision, slip op. at 9.) When faced with an aggressive student and no space to retreat, in this instance, L.H.’s actions cannot be considered conduct unbecoming. The Examiners

therefore agree with the ALJ's conclusion that the Order to Show Cause must be dismissed and no action taken against L.H.'s certificates. (Initial Decision, slip op. at 10.)

Accordingly, on July 28, 2009, the Board of Examiners voted to adopt the Initial Decision and dismiss the Order to Show Cause. On this 17th day of September 2009, the Board of Examiners formally adopted its written decision to adopt the Initial Decision in this matter, and it is therefore ORDERED that the Order to Show Cause issued to L.H. is hereby dismissed effective this day.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing: _____, 200

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

RRH:MZ: