

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
KIMBERLEY PESCHI : ORDER OF SUSPENSION
_____ : DOCKET NO: 1920-192

At its meeting of June 26, 2020, the State Board of Examiners (Board) reviewed a tenure decision regarding Kimberley Peschi, a tenured teacher in the Linwood Public School District (Linwood). Linwood certified tenure charges against Peschi alleging that she used her foot to knock over the chair that a 6th grade student was sitting in, causing him to fall and hit the floor.

On June 1, 2020, the Arbitrator assigned to the case pursuant to *N.J.S.A.* 18A:6-16 found that Linwood demonstrated the truthfulness of the charges and dismissed Peschi from her tenured employment. *In the Matter of the Tenure Hearing of Kimberley Peschi*, Dkt. No. 76-4/17 (Arbitrator's Decision, June 1, 2020). The matter was referred to the New Jersey State Board of Examiners (Board) for review.

In the tenure charges, Linwood alleged that Peschi intentionally and purposefully pulled student M.M.'s chair to the floor with him seated in it, failed to help him get up, declined to render first aid, provide care or apologize and told him she had pulled his chair down to the ground with him in it to teach him a lesson. Peschi insisted that the incident was an accident. The Arbitrator did not find that the conduct was accidental because Peschi should have then shown concern for the student rather than walking away. Peschi, instead, explained to M.M. that she was trying to teach him a lesson and she walked away. The Arbitrator therefore found that her actions were "unprofessional, irresponsible, dangerous, punitive, purposeful, and amounted to prohibited corporal punishment." Her actions constituted conduct unbecoming a teacher.

The Arbitrator additionally found that Peschi failed in her responsibility to protect M.M.'s health, safety, and welfare. She failed to conduct herself at the highest level of professional responsibility. Her conduct constituted corporal punishment prohibited by Linwood Board Policy. The Arbitrator found that there is "not a scintilla of evidence that [Peschi] needed to upend M.M. as a reasonable and necessary use of force." The Arbitrator therefore found that the appropriate penalty for Peschi's conduct and act of corporal punishment is dismissal.

Peschi currently holds a Teacher of Music Certificate of Eligibility with Advanced Standing, Teacher of Music Standard Certificate and Supervisor Certificate. After reviewing the above information, at its July 30, 2020 meeting, the Board voted to issue an Order to Show Cause to Peschi as to why her certificates should not be suspended. The Order was predicated on the charges proven in the tenure hearing.

The Board sent Peschi the Order to Show Cause by regular and certified mail on August 12, 2020. The Order provided that Peschi's Answer was due within 30 days. Peschi filed her Answer on September 11, 2020.

In that Answer, Peschi indicated that the tenure charges speak for themselves as does the Arbitrator's Decision. She nevertheless, denied the allegations to the extent a further Answer was required.

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on October 6, 2020, the Board sent Peschi a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Peschi was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against her certificates as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against her certificates. It also explained that upon

review of the charges against her and the legal arguments tendered in her defense, the Board would determine if Peschi's offense warranted action against her certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Peschi was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Peschi filed a written response on December 29, 2020. Peschi also asked to appear before the Board.

In her Hearing Response, Peschi argued that her long and exemplary teaching record, the complex procedural history of the matter, and past precedent do not warrant imposition of a penalty in this matter. (Hearing Response, p. 1). Peschi indicates that the Arbitrator's decision in this matter should not control because he was not the only factfinder. *Id.* at p. 4. Peschi notes that two judges of the Superior Court of New Jersey have "reached conclusions different from those of the Arbitrator." *Id.* Judge Rauh, in connection with criminal charges relating to the allegations herein, did not find that Peschi engaged in a "deliberate act to pull a child down." *Id.* at p. 5. Judge Rauh entered a Judgement of Acquittal as to the criminal charges. *Id.*

Peschi also states that in the civil litigation filed by the subject student's parents against Linwood, Judge Porto found that Peschi's conduct could be considered negligent and it did not rise to the level of willful misconduct. *Id.* at p. 6.

Peschi believes that the findings in the criminal and civil litigation relating to these allegations should preclude the Board from adopting the opinion of the Arbitrator over those of the Superior Court Judges. *Id.* Peschi argues that the Board cannot determine, based solely on the Arbitrator's finding, that Peschi "intentionally knocked over M.M.'s chair, and penalize her on that basis." *Id.* at p. 8.

Peschi also states that the Board should consider her prior record when reviewing this matter. *Id.* Specifically, Peschi's record contains outstanding evaluations, letters of support and

commendation, service awards, and letters of appreciation. *Id.* Peschi argues that prior to her suspension, she “was undisputedly everything that a school district or community could ask for in an educator.” *Id.* Peschi’s submission details her annual evaluations, teaching observations, as well as commendations and letters of support from students. *Id.* at p. 9-15.

Finally, Peschi argues that law and past precedent do not support imposition of penalty in this case. *Id.* at p. 15. Peschi cites to several cases of varying factual patterns to support her contention that suspension of her certificates is not aligned to the level and nature of the unbecoming conduct in this matter.

In testimony before the Board, Peschi appeared with her counsel, Ed Cridge, Esquire. Counsel began the hearing by indicating that he wished to highlight a few points from his hearing submission. Specifically, he indicated that it was a single arbitrator that concluded Peschi pushed a student out of a chair. He stated that the matter was considered by two other judges, one in a criminal court and the other in a civil context. He stated that in both cases the courts did not find the conduct necessary to form the basis for the causes of action in the civil or criminal context. He argued that there is a material fact in dispute because Peschi denied the conduct and the other judges agreed with her. He stated that the Board should not apply a “single negative finding.” He also commented that Peschi has a clean teaching record prior to this conduct and that she has over 15 years of experience as well as good evaluations and observations.

Peschi appeared and wished to make a statement to the Board. She has had time to contemplate her conduct over the past 4 years. She spent 17 years with Linwood; she built a program and music lab. She loves her profession and states that former students reach out to her once they have moved on. She gets excited to see students on Broadway or hear them on Spotify.

She further stated that her action was not premeditated. She meant no harm to the student. She was sad she was not permitted to speak to the student's parents, and she acknowledged that she should not have used her foot to upright the chair.

The threshold issue before the Board in this matter, therefore, is whether Peschi's conduct constitutes unbecoming conduct of a certificate holder. At its meeting of May 13, 2021, the Board considered the allegations in the Order to Show Cause as well as Peschi's Answer, Hearing Response and hearing testimony. The Board determined that it was constrained by collateral estoppel to accept the facts as found in the tenure hearing and therefore no material facts related to Peschi's offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17, 2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings).

The Board is not constrained by the fact that Peschi was acquitted of criminal charges, or that a civil court judge found her conduct was not willful or wanton for purposes of civil liability. The burden of proof in the criminal and civil context is different than the burden in an administrative setting. The Arbitrator also considered these arguments and found specifically that Judge Rauh did "not consider Respondent's failure to respond to M.M.'s fall with care and support, and that she walked away without offering him any help or showing concern about anything other than the lesson about proper chair use he shall have learned from the experience." Arbitrator Decision at p. 42. The Board is not persuaded that it should not apply collateral estoppel to the Arbitrator's decision simply because of findings in the criminal/civil context. The Board is looking at the conduct in a different posture than the criminal/civil judges and is reviewing the matter for imposition of a different penalty than the criminal/civil judges. Thus, the Board determines that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Peschi's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against her certificates pursuant to *N.J.A.C.* 6A:9B-4.5. The Board finds that it does.

The Board may revoke or suspend the certification of any certificate holder based on demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C.* 6A:9B-4.4. In this case, the record established that Peschi used her foot to cause a student to fall out of his chair, causing him to fall and then walked away without providing him any care or support while also failing to report the incident. The Board agrees with the Arbitrator that Peschi's conduct was unprofessional, irresponsible, dangerous, and purposeful. The Board is likewise persuaded by the Arbitrator's finding that Peschi believed another teacher to be "overreacting" to the incident; this finding further demonstrates that Peschi showed a significant lack of care for the student. Given Peschi's lengthy record and prior positive evaluations in the district, the Board is therefore convinced that the appropriate response in this matter is a two-year suspension of Peschi's certificate.

The Board does not believe that the various cases cited by Peschi preclude the Board from issuing a suspension in this matter. Each case is unique and the facts specific to each matter inform the Board's decision as to penalty. In this case, the Board's decision as to penalty is impacted by Peschi's decision to use her foot to cause a student to fall out of the chair, and then blatantly disregard the student's safety by walking away and not reporting the incident to anyone. The Board finds that the act itself, the lack of concern after the incident, combined with the finding that she believes other involved teachers overreacted to the matter are aggravating factors that differentiate this case from other cases.

Accordingly, on May 13, 2021, the Board voted to suspend Kimberley Peschi's Teacher of Music Certificate of Eligibility with Advanced Standing and Teacher of Music and Supervisor certificates for two years. On this 25th day of June 2021 the Board voted to adopt its formal written decision and it is therefore ORDERED that Peschi's certificates are hereby suspended for two years, effective immediately. It is further ORDERED that Peschi return her certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

Date of Mailing:
Via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-38.4.