

SBE #0405-103  
SB # 47-05

IN THE MATTER OF THE SUSPENSION :  
OF THE TEACHING CERTIFICATES OF : STATE BOARD OF EDUCATION  
CARMELLA CONFESSORE BY THE : DECISION ON MOTION  
STATE BOARD OF EXAMINERS. :

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Action by the State Board of Examiners taken on November 3, 2005

Decision on motion on behalf of the State Board of Education,  
November 11, 2005

For the Respondent-Appellant, Szaferman, Lakind, Blumstein, Blader &  
Lehmann, P.C. (Robert E. Lytle, Esq., of Counsel)

For the Petitioner-Respondent, Carolyn Labin, Deputy Attorney General  
(Peter C. Harvey, Attorney General of New Jersey)

This matter is before us as the result of an action taken by the State Board of Examiners at its meeting on November 3, 2005. At that meeting, the Board of Examiners voted to suspend the "teaching certificates" of appellant Carmella Confessore for a period of two years. This action was based on an Order to Show Cause that indicated that it had been issued on September 23, 2004 but not mailed until April 19, 2005.

The Order to Show Cause had charged that the New Jersey Department of Education's Office of Compliance Investigation had conducted an investigation and had concluded that appellant "was making fraudulent payroll payments to an individual who did not perform any [work] at the preschool" which appellant owned.

Appellant filed her answer to the Order to Show Cause on May 19, 2005. In her answer, appellant admitted making salary payments to the individual in question, but she denied that the individual had not worked at the preschool.

As previously stated, at its meeting on November 3, 2005, the State Board of Examiners voted to suspend appellant's teaching certificates for two years effective immediately. Appellant was notified of the Board of Examiners' action by letter to her attorney dated November 4, 2005 from the Acting Secretary of the Board of Examiners. In his letter, the Acting Secretary advised appellant's attorney that: "A written decision setting forth the reasons for the Board's action will be forwarded to you shortly."

Appellant filed a notice of appeal to the State Board of Education on November 8, 2005. Appellant also sought a stay on an emergent basis of the Board of Examiners' action. In his certification in support of appellant's motion, appellant's attorney averred that he had not received any written decision from the State Board of Examiners.

On November 11, 2005, the President of the State Board of Education and the Chairperson of the Legal Committee granted a stay of the State Board of Examiners' action of November 3, 2005 on an emergent basis pending consideration of the appellant's motion by the State Board of Education.<sup>1</sup>

After careful review of the papers filed by the parties and the record certified to us on behalf of the State Board of Examiners, we stay the action of the Board of Examiners suspending appellant's teaching certification. As appellant's attorney

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<sup>1</sup> Pursuant to N.J.A.C. 6A:4-3.3, "[t]he President of the State Board or, in the President's absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6A:4-2.4 unless the determination would constitute the final decision with respect to the controversy."

indicated, the State Board of Examiners did not issue a written decision setting forth the reasons for its action when it voted to suspend appellant's certification on November 3. Nor has a written decision adopted by the State Board of Examiners been issued to date. Although the Deputy Attorney General representing the Board of Examiners attached a written Order of Suspension signed by the Acting Secretary of the Board of Examiners to her answer to appellant's motion for a stay, that document was not voted upon by the State Board of Examiners.<sup>2</sup> In the absence of a written decision adopted by the Board of Examiners setting forth the reasons for its action of November 3, we cannot review the appeal that has been taken from that action. We therefore stay the action and remand the matter to the State Board of Examiners with the direction that it issue and certify to us a written decision that has been properly adopted by a formal vote of the Board of Examiners at its next public meeting.

We retain jurisdiction but stay the briefing schedule on the merits of the appeal pending our receipt of a written decision adopted by the Board of Examiners.

Ernest P. Lepore abstained.

January 4, 2006

Date of mailing \_\_\_\_\_

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<sup>2</sup> The document indicates that it was mailed on November 9, 2005. The document was not presented to the Board of Examiners on November 3, 2005, when it voted to suspend appellant's teaching certification, and the Board of Examiners did not meet again until December.