

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
STATE BOARD OF EXAMINERS. :

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

Remanded by the State Board of Education, January 4, 2006

Decision issued by the State Board of Examiners, January 27, 2006

Decided by the State Board of Education, March 1, 2006

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
(Stuart Rabner, Attorney General of New Jersey)

The State Board of Examiners issued an Order to Carmella Confessore (hereinafter "appellant" or "Confessore"), the co-owner of the Harrison Learning Center, a preschool at which she also served as a teacher, to show cause why her Elementary School and Preschool through Grade 3 teaching certifications should not be revoked or suspended based on a report issued by the Department of Education's Office of Compliance Investigation. According to the Show Cause Order, that report "concluded that Confessore's school was making fraudulent payroll payments to an individual who

did not perform any [sic] at the preschool.¹ Judy Treanor, a part-time employee of the school did not have her name on any of the school's payroll registers. Her salary payments instead went to her son, Brian Treanor."

In her answer and accompanying certification, the appellant admitted that the salary payments of Judith Treanor, a part-time employee of the preschool, had been made to her son, Brian Treanor, during 2003. The appellant explained that Judith Treanor's husband had died in May 2003 after a lengthy battle with cancer and that she had reluctantly agreed to Mrs. Treanor's request to make her salary payable to her son since she was concerned that her income could have disqualified her from receiving her husband's social security benefits. The appellant refuted the Board of Examiners' charge that Brian Treanor was not employed at the school, averring that he was employed to perform maintenance, custodial and computer duties. The appellant added that she "did not personally profit from her conduct and was motivated solely by a compassionate, albeit misguided, attempt to help a friend who was experiencing severe personal and financial difficulties as the result of her husband's lengthily [sic] illness and subsequent death." Answer to Show Cause Order, at 3. She averred that both Judith and Brian Treanor "were paid solely for work that they actually performed" at the school. Appellant's Certification, at 2.

Brian Treanor averred in a certification that he was employed by the preschool during the 2003-04 school year performing maintenance and custodial duties after school hours and that he also assisted in setting up a computer system for the school. He stated that his paycheck included his salary in addition to payment for work

¹ We note that the Office of Compliance Investigation did not conclude that the school was making fraudulent payroll payments. Rather, it found "a potential violation of federal and state tax regulations." Report, at 2.

performed at the school by his mother and that all state and federal taxes were deducted from each paycheck.

By letter dated November 4, 2005 from the Acting Secretary of the Board of Examiners, the appellant was notified that the Board of Examiners had voted at its meeting on November 3, 2005 to suspend the appellant's teaching certifications for two years, effective immediately. She was advised that a written decision setting forth the reasons for the Board of Examiners' action would be forwarded to her shortly.

The appellant filed an appeal to the State Board of Education, along with an emergent application seeking a stay of the Board of Examiners' action.

On November 11, 2005, the President of the State Board of Education and the Chairperson of the Legal Committee, acting on behalf of the State Board pursuant to their authority under N.J.A.C. 6A:4-3.3, granted a stay of the 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.

In a decision issued on January 4, 2006, we stayed the Board of Examiners' action and remanded the matter to the Board of Examiners with the direction that it issue and certify to us a written decision that had been properly adopted by a formal vote at its next public meeting. On February 1, 2006, the Acting Secretary of the Board of Examiners transmitted to us a written decision adopted by the Board of Examiners on January 19, 2006 and mailed on January 27. In its decision, the Board of Examiners concluded that the appellant's behavior violated the standard of conduct expected of a certificate holder, observing that "[h]owever well-intentioned Confessore may have been there can be no dispute that her actions were dishonest and misleading even if they

were designed to help a friend.” State Board of Examiners’ Decision, slip op. at 4. Finding that the appellant’s “otherwise unblemished career does weigh heavily in her favor,” id. at 5, the Board of Examiners suspended the appellant’s Elementary School and Preschool Through Grade 3 teaching certifications for two years beginning on January 19, 2006.

The parties thereafter inquired as to whether the stay imposed by the State Board on January 4 was to remain in effect until a decision was made on the underlying appeal. In addition, appellant’s counsel informed us that the decisions rendered by the Board of Examiners over the past few years were not posted on the Department of Education’s website and were not otherwise available. He contended that the failure to provide him with an opportunity to review those decisions constituted a denial of the appellant’s right to due process.

In a decision issued on March 1, 2006, we clarified that the stay we had issued on January 4 was not conditional and did not expire upon the adoption of a written decision by the Board of Examiners. Rather, the stay remained in effect unless vacated by formal action by the State Board of Education. Since decisions rendered in recent years by the Board of Examiners were not generally available, we directed the Board of Examiners to make its decisions available to the appellant’s counsel and to the State Board of Education by April 5, 2006. We directed that the stay of the Board of Examiners’ action would remain in effect until such time as we determined otherwise.

On April 20, 2006, the briefing schedule was re-established after the decisions of the Board of Examiners were posted on the Department of Education’s website.

In the brief in support of her appeal, the appellant argues that the suspension imposed by the Board of Examiners should be vacated in light of the circumstances established in the record. She contends that if a penalty is warranted, a two-year suspension is too harsh in view of the penalties imposed by the Board of Examiners in other cases. The appellant also contends that her Preschool Through Grade 3 certification should not be suspended since it was issued after the conduct in question had occurred. The Deputy Attorney General representing the State Board of Examiners counters that the appellant's conduct was dishonest and that the two-year suspension should be upheld.

After a thorough review of the record, we agree with the Board of Examiners that the appellant's behavior as established in the record violated the standard of conduct expected of a certificate holder. Teachers hold a position demanding public trust and, because of their influence on children, are held to a higher standard of conduct. In the Matter of the Tenure Hearing of McIntyre, decided by the Commissioner of Education, January 13, 1995, aff'd, State Board of Education, June 7, 1995, aff'd, Docket #A-5942-94T5 (App. Div. 1996). The appellant's conduct in her role as co-owner of a preschool in authorizing the payment of Judith Treanor's salary to her son warrants the suspension of her teaching certifications. However, review of the record, as well as recent decisions rendered by the Board of Examiners,² has convinced us that a two-year suspension is unduly harsh.

The record before us reveals that the payment arrangement at issue was, as the appellant professes, a "compassionate, albeit misguided, attempt" to assist a friend who had just suffered a personal tragedy; that the appellant did not personally benefit from

² See, supra, p.4.

such arrangement; that the salary payments to Brian Treanor were for work actually performed by the Treanors; that all appropriate state and federal taxes were deducted from the payments made to Brian; that it was subsequently learned that Judith Treanor would not have been disqualified from receiving her husband's social security benefits and, thus, the payment arrangement did not provide her with any benefits to which she was not entitled; that no civil or criminal charges were filed as a result of the payment arrangement; that the Office of Compliance Investigation, while expressing concerns about a potential violation of federal and state tax regulations, did not conclude, as the Order to Show Cause indicates, that the preschool was making "fraudulent" payroll payments; that the appellant's action did not involve or affect students; and that the appellant had an unblemished record in her 31 years of service as a teacher.

Given these circumstances, we conclude that a one-year suspension of the appellant's Elementary School and Preschool through Grade 3 certifications is the appropriate penalty. In so doing, we reject the appellant's contention that her Preschool Through Grade 3 certification should not be suspended since she did not receive it until September 2004, after the conduct at issue had occurred. The appellant held a Preschool through Grade 3 certification at the time the Board of Examiners issued its Order to Show Cause in this matter, and the education laws and implementing regulations provide the Board of Examiners with the authority to suspend or revoke all certificates that it has issued.³ See N.J.S.A. 18A:6-38; N.J.A.C. 6A:9-4.2.

Therefore, for the reasons stated herein, we modify the penalty imposed by the State Board of Examiners and direct that the appellant's Elementary School and

³ We note that since the appellant teaches at a preschool, a limitation on the Board of Examiners' statutory authority which would preclude it from suspending the appellant's Preschool through Grade 3 certification would effectively negate any penalty imposed in this instance.

Preschool Through Grade 3 certifications be suspended for one year, effective immediately. Since we have now rendered our decision in this matter, we vacate the stay we had issued on January 4, 2006.

October 4, 2006

Date of mailing _____