

SBE #0304-193
SB # 17-07

IN THE MATTER OF THE REVOCATION :
OF THE CERTIFICATES OF V.R. BY THE : STATE BOARD OF EDUCATION
STATE BOARD OF EXAMINERS. : DECISION

Decided by the State Board of Examiners, June 7, 2007

For the Petitioner-Respondent, Joyce D. Atkins, Deputy Attorney General
(Anne M. Milgram, Attorney General of New Jersey)

For the Respondent-Appellant, Eugene G. Liss, Esq.

In a decision issued on April 27, 2005, the Commissioner of Education dismissed the appellant, V.R., from her tenured employment as a teacher with the State-operated School District of the City of Newark for unbecoming conduct. The Commissioner found that the State-operated District had demonstrated the truthfulness of tenure charges alleging that the appellant had slammed her classroom door on the fingers of a seven-year-old student. The Commissioner observed that, although it was not contended that the appellant had intended to harm the student, the appellant's deliberate action in slamming the door had resulted in serious injury to the student. In addition, the Commissioner found inexplicable the appellant's failure to seek assistance from a neighboring classroom or to call the office for help after the student was injured. The Commissioner also found disquieting the appellant's lack of candor with regard to the details of the incident, and he concluded that any mitigating factors were greatly outweighed by the seriousness of the appellant's conduct. The Commissioner

forwarded his decision to the State Board of Examiners for any appropriate action against the appellant's certification. On November 2, 2005, the State Board of Education affirmed the decision of the Commissioner.

In January 2007, the State Board of Examiners issued an order to the appellant to show cause why her certification should not be suspended or revoked. In her answer to the show cause order, the appellant argued that the charges did not warrant the suspension or revocation of her certification. In addition, she related, inter alia, that she had had a 28-year unblemished career and had been in chronic pain and taking several medications at the time of the incident at issue as the result of a broken neck suffered in a fall at the school in May 2001. Finding that there were no material facts in dispute, the Board of Examiners provided the appellant with the opportunity to submit written argument on the issue of whether her behavior constituted conduct unbecoming a certificate holder. The appellant submitted a written response reiterating her previous arguments. In a decision issued on June 7, 2007, the State Board of Examiners, after consideration of the papers filed, determined to revoke the appellant's certification.

On June 29, 2007, the appellant filed the instant appeal to the State Board of Education, seeking a hearing on the issue of whether any action should be taken against her certification.

On August 29, 2007, while this appeal was pending before us, the Appellate Division issued its decision in In the Matter of the Revocation of the Teaching Certificate of Stephen Fox, Docket #A-5021-05T3 (App. Div. 2007). In that case, the Court reversed our decision affirming the Board of Examiners' determination to revoke the teaching certificates of a teaching staff member who acknowledged that he had kissed on the lips a male student who had come to him for guidance. The Court concluded

that, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, Fox was entitled to present evidence in mitigation of the revocation sanction. Therefore, the Court determined that Fox was “entitled to a hearing at the [Office of Administrative Law], even if the only issue being contested is the sanction,” Fox, supra, slip op. at 7, and it remanded for a hearing limited to the issue of the appropriate sanction.

In view of the Court’s decision in Fox, we reverse the State Board of Examiners’ decision to revoke the appellant’s certification and remand this matter to the Board of Examiners for referral to the Office of Administrative Law for a hearing limited to the issue of the appropriate sanction. In so doing, we reiterate the Court’s instructions in Fox:

[W]e do not curtail the discretion of the [Administrative Law Judge] to impose reasonable constraints on the manner in which appellant’s revocation hearing will be conducted. As long as some reasonable avenues of oral presentation are permitted (e.g., oral arguments by counsel with an allocation or testimony, if desired, by appellant himself), we will not preordain or interfere with the mechanics of the proceeding.² We simply hold that appellant is entitled to more than a hearing “on the papers.”

² Specifically, we leave to the discretion of the ALJ to decide whether any character witnesses should be permitted to provide oral testimony, and any related determinations of cumulativeness.

Id. at 10.

We retain jurisdiction.

December 5, 2007

Date of mailing _____