

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
MARY TYSON : ORDER OF REVOCATION
_____ : DOCKET NO: 0506-186

At its meeting of December 8, 2005, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Mary Tyson from her tenured position with the State-Operated School District of the City of Newark (Newark) for charges of unbecoming conduct. *Division of Youth and Family Services v. M.T. and In the Matter of the Tenure Hearing of M.T.*, Docket Nos. HDY 1417-99 and EDU 11159-99 (Commissioner's Decision, June 23, 2005). Tyson currently holds a Teacher of Elementary School certificate, issued in June 1969.

This case originated on January 8, 1998, when Newark certified tenure charges against Tyson. Tyson was employed as an elementary school teacher and taught the seventh grade. The district charged her with unbecoming conduct for committing corporal punishment against a student, S.N. While teaching a class, Tyson got into a verbal altercation with S.N. in which the student used profanity aimed at Tyson. S.N. threw a book at Tyson during the course of this dispute. Tyson then smacked the student, picked up a chair and started swinging it at him. She hit him several times with the chair and S.N. sustained a puncture wound to his neck as a result. Newark also alleged that Tyson used inflammatory and derogatory language directed at S.N. In addition to the tenure charges, the Division of Youth and Family Services (DYFS) investigated the matter and concluded that Tyson had abused the student.

The Commissioner of Education transmitted the tenure case to the Office of Administrative Law (OAL). The case was consolidated with the DYFS matter.

Administrative Law Judge (ALJ) Jeffrey Gerson heard testimony over several days in December 2001 and January 2002. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on January 12, 2005. *M.T. v. State-Operated School District, City of Newark and Division of Youth and Family Services v. M.T.*, Docket Nos. EDU 11160-98 and HDY 1317-99 (Initial Decision, January 12, 2005).

In that decision, ALJ Gerson found that Tyson picked up the chair “to inflict physical harm on S.N. and was successful in doing so.” (Initial Decision, slip op. at 5). The ALJ also found that although Tyson did not intentionally antagonize S.N. with her comments, they did have the effect of escalating the situation.¹ (Initial Decision, slip op. at 6). Furthermore, ALJ Gerson determined that after S.N. threw the book at Tyson, she “aggressively pursued S.N. in a momentary loss of control and slapped at him with her hand and picked up a chair and struck him several times, an act which was likely to and did in fact cause serious physical injury.” (Initial Decision, slip op. at 6).

After considering all the testimony, ALJ Gerson found that Tyson’s conduct caused S.N. serious physical injury. (Initial Decision, slip op. at 6). Moreover, the ALJ found that Tyson’s testimony, that she acted in self-defense and merely held S.N. away from her with the legs of the chair in order to guide him out of the classroom, was not credible. (Initial Decision, slip op. at 5, 7). In contrast, ALJ Gerson found that the testimony elicited from a student witness, S.B., was credible and corroborated by the statements taken from the other student witnesses to the attack. (Initial Decision, slip op.

¹ The ALJ dismissed the tenure charge contending that Tyson used inflammatory and derogatory language toward S.N. (Initial Decision, slip op. at 9). ALJ Gerson found that Tyson did not intend to refer to S.N.’s mother in a derogatory manner and that it was S.N.’s perception and not Tyson’s intent that led to the escalation of the conflict. (Initial Decision, slip op. at 9).

at 3-6). The ALJ therefore concluded that the Board had proven that Tyson had engaged in an unwarranted physical altercation with S.N. (Initial Decision, slip op. at 8). ALJ Gerson concluded that Newark had “in fact exceeded the preponderance burden and has in fact produced compelling credible evidence of [Tyson’s] loss of control and subsequent physical assault.” (Initial Decision, slip op. at 8). Accordingly, since the charge had been “convincingly established” and it was of such a serious nature, ALJ Gerson concluded that Tyson’s dismissal was warranted. (Initial Decision, slip op. at 8). Consequently, the ALJ ordered Tyson dismissed from her tenured employment. (Initial Decision, slip op. at 10).

In a decision dated June 23, 2005, the Commissioner of Education adopted the ALJ’s Initial Decision as to the proven tenure charge against Tyson. The Commissioner agreed with the ALJ that the local board had proven its case against Tyson with regard to the tenure charge of engaging in an unwarranted physical altercation with S.N. (Commissioner’s Decision, slip op. at 6-8). The Commissioner found that Tyson’s use of physical force was conduct unbecoming a teacher and that her aggression far exceeded any shown to her by S.N. (Commissioner’s Decision, slip op. at 8). He determined that “the facts suggest that respondent lashed out in anger at S.N. without regard for S.N.’s safety or, for that matter, the safety of other students that were situated near where she was swinging the chair.” (Commissioner’s Decision, slip op. at 10). He also determined that Tyson had the option of leaving the room and calling security for help. (Commissioner’s Decision, slip op. at 8-9). He also noted that the “wound was a few centimeters from a major artery and could have been life threatening.” (Commissioner’s Decision, slip op. at 10-11). The Commissioner concluded that “[t]he operative

circumstances in this case did not bespeak the level of threat which would justify the use of such force against a child.” (Commissioner’s Decision, slip op. at 10). The Commissioner therefore agreed with the ALJ that Tyson’s actions warranted her dismissal from her tenured position. (Commissioner’s Decision, slip op. at 10-11). Accordingly, the Commissioner affirmed Tyson’s removal from her tenured employment with Newark and transmitted the matter to the State Board of Examiners pursuant to *N.J.A.C. 6A:9-17.6* for appropriate action regarding Tyson’s certificate. (Commissioner’s Decision, slip op. at 11).

Thereafter, on December 8, 2005, the State Board of Examiners issued Tyson an Order to Show Cause as to why her certificate should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Tyson the Order to Show Cause by regular and certified mail on January 6, 2006. The Order provided that Tyson’s Answer was due within 30 days. Tyson filed an Answer on January 31, 2006. In her Answer Tyson admitted the allegations in the Order to Show Cause. (Answer, ¶¶ 1-5). She also denied that the Board of Examiners had cause to suspend or revoke her license because she had taught in Newark for 28 years before the incident and had satisfactory evaluations. (Answer, ¶ 6A). In the remainder of her Answer, Tyson added that she was injured when S.N. threw the book at her and that the injury caused her response. (Answer, ¶ 6C). She added that she should still be allowed to teach “young children in lower elementary grades wherein an assault and battery upon her of a serious nature would unlikely occur.” (Answer, ¶ 6F).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on February 9, 2006, the Board sent Tyson a hearing notice by regular and certified mail. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, Tyson was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that, upon review of the charges against her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her offense warranted action against her certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Tyson responded to the Hearing Notice on March 9, 2006. In that response, she accepted as fact the allegations in the Order to Show Cause. (Hearing Response, pp. 4-5). She also catalogued many of the positive comments she had received in her evaluations over the years. (Hearing Response, pp. 5-6). She reiterated that her reaction to S.N. was based on the fact that she was injured and that she had done nothing to warrant “such a violent and explosive attack upon her physical being.” (Hearing Response, p. 7). She added that her conduct was not pre-meditated or part of a pattern but rather an isolated incident. (Hearing Response, p. 8). She argued that although her judgment was wrong so was the fact that she had been attacked. (Hearing Response, p. 8). Tyson claimed that one error in nearly 30 years of teaching should not bar her from her profession. (Hearing Response, p.8).

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Tyson’s conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 4, 2006, the State Board of

Examiners reviewed the charges and papers Tyson filed in response to the Order to Show Cause. After reviewing her response, the Board of Examiners determined that no material facts related to Tyson's offense were in dispute since she admitted to the allegations in the Order to Show Cause. Accordingly, her actions regarding the physical altercation with S.N. constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Tyson's offense as set forth in the Order to Show Cause, represents just cause to act against her certificate pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C. 6A:9-17.5*. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). As ALJ Gerson noted, Tyson's "aggressive pursuit of S.N., both with hand and chair, resulting in serious injury to S.N. can only be characterized as sufficiently flagrant, warranting dismissal." (Initial Decision, slip op. at 8). The Board of Examiners agrees wholeheartedly. "Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. There can be no dispute that Tyson's act of slapping a student and repeatedly hitting him with a chair negates any claim she can have to self-restraint. Her inability to neutralize the situation or, in the alternative, seek outside help speaks volumes about her lack of control. This volatility

does not belong in a classroom. Furthermore, the evidence Tyson submitted in support of mitigation, does little to militate against revocation given the egregious nature of her offense and the severe injury sustained by the student. Thus, the Board has determined that the only proper response to Tyson's breach is revocation.

Accordingly, pursuant to the Board of Examiners' vote, it is therefore ORDERED that Mary Tyson's Teacher of Elementary School certificate be revoked effective this 8th day of June 2006. It is further ORDERED that Tyson return her certificate to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: JUNE 12, 2006

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