IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
V.R.[1]	:	ORDER OF DISMISSAL
_____	:	DOCKET NO: 0304-193

At its meeting of December 7, 2006, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed V.R. 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. V.R., and In the Matter of the Tenure Hearing of V.R.,* Docket Nos. HDY 1435-04 and EDU 1525-04 (Consolidated) (Commissioner's Decision, April 27, 2005). V.R. currently holds Teacher of Elementary School and Teacher of Nursery School certificates, both issued in June 1974.

This case originated on November 25, 2003, when the Newark Board of Education certified tenure charges against V.R. The district charged her with corporal punishment and unbecoming conduct for slamming her classroom door on the fingers of a student causing him injury. The charges arose from a Division of Youth and Family Services' (DYFS) investigation, which substantiated abuse/neglect.

The Acting Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). The tenure case was consolidated with V.R.'s appeal of the DYFS findings. Administrative Law Judge (ALJ) Margaret Monaco heard testimony on several days in May 2004. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on August 12, 2004.

In that decision, ALJ Monaco concluded that V.R.'s "testimony as a whole casts a shadow of doubt on the accuracy of her rendition." (Initial Decision, slip op. at 39). The ALJ

[1] As the Administrative Law Judge sealed the record in this matter, the respondent will be referred to by her initials in this decision.

found that on November 1, 2002, A., a seven-year-old student in V.R.'s class, was acting out. (Initial Decision, slip op. at 43). After telling A. to stop his behavior, which he did not do, V.R. became angry and attempted to remove him from her classroom. (Initial Decision, slip op. at 43). V.R. was removing A. from her classroom and when he was in the hallway she slammed or pulled shut the classroom door, catching A.'s left hand in the door jamb. (Initial Decision, slip op. at 43). V.R. did not ensure that "A. was not in or about the door before she closed it." (Initial Decision, slip op. at 43). When V.R. realized A. was injured, she instructed him to run to the nurse's office. (Initial Decision, slip op. at 44). V.R. was aware of the school's policy that students are not to be unattended in the hallways. (Initial Decision, slip op. at 44). A. sustained a crushing injury of the first and third digit and received six stitches to his left middle finger. (Initial Decision, slip op. at 11). ALJ Monaco determined that although A.'s injuries were not caused by "accidental means," V.R. had not physically abused or neglected the student. (Initial Decision, slip op. at 50-53). However, the ALJ concluded that "as a direct result of Ms. R.'s inexcusable conduct a student sustained serious injury." (Initial Decision, slip op. at 52). ALJ Monaco concluded that "DYFS' finding relative to the action should be modified to 'not substantiated with concerns.'" (Initial Decision, slip op. at 53).[2] As to the tenure charges, the ALJ concluded that the district met its burden of proof that V.R.'s "act of slamming her classroom door on the fingers of A. constitutes conduct unbecoming a teacher warranting disciplinary action." (Initial Decision, slip op. at 56). ALJ Monaco found that the evidence did not support a charge of corporal punishment. (Initial Decision, slip op. at 56).

[2] The DYFS portion of the decision was rejected by the Director of DYFS who found that the facts established that V.R.'s conduct amounted to abuse and neglect and warranted leaving V.R.'s name on its Child Abuse Central Registry. DYFS' decision was affirmed by the Appellate Division of the Superior Court. Those aspects of the Initial Decision are not at issue here.

After considering the appropriate penalty, ALJ Monaco found that because the charge involved a single incident, "dismissal is an unduly harsh penalty to impose under the circumstances presented." (Initial Decision, slip op. at 58). Consequently, the ALJ concluded that the forfeiture of V.R.'s pay withheld during her suspension period, and the forfeiture of her salary and/or adjustment increment was "a sufficient and reasonable discipline under the circumstances." (Initial Decision, slip op. at 58).

In a decision dated April 27, 2003, the Commissioner of Education affirmed the ALJ's Initial Decision as to the finding regarding the tenure charges against V.R. (Commissioner's Decision, slip op. at 5). The Commissioner agreed with the ALJ that the local board had proven its case against V.R. with regard to the charge of unbecoming conduct, but not corporal punishment. (Commissioner's Decision, slip op. at 5). The Commissioner disagreed, however, with the penalty the ALJ imposed and found that the single incident here was sufficient to justify V.R.'s removal from her tenured position. (Commissioner's Decision, slip op. at 6). The Commissioner concluded that "[a]lthough it is not contended that respondent *intended* to harm A.R., her deliberate action of forcibly slamming her classroom door resulted in serious injury to the young student who, by virtue of her responsible position, she had a fiduciary obligation to protect." (Commissioner's Decision, slip op. at 6) (emphasis in original). Accordingly, the Commissioner ordered V.R.'s removal from her tenured employment with the Newark Board of Education and transmitted the matter to the State Board of Examiners for appropriate action regarding V.R.'s certificates. (Commissioner's Decision, slip op. at 7). V.R. appealed to the State Board of Education which affirmed "the decision of the Commissioner of Education to dismiss the appellant from her tenured position…for the reasons expressed therein" on November 2, 2005. (State Board Decision, slip op. at 1). The Appellate Division of the New

Jersey Superior Court affirmed the State Board's decision both as to the finding of unbecoming conduct and the imposition of the penalty. *Division of Youth and Family Services v. V.R., and In the Matter of the Tenure Hearing of V.R.,* Dkt. No. A-1731-05T5 (App. Div. August 24, 2006).

Thereafter, on January 18, 2007, the State Board of Examiners issued V.R. an Order to Show Cause as to why her certificates 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 V.R. the Order to Show Cause by regular and certified mail on January 25, 2007. The Order provided that V.R.'s Answer was due within 30 days. V.R. filed an Answer on February 26, 2007. In her Answer, V.R. admitted that the district had brought tenure charges against her but denied that the proven charges warranted the suspension or revocation of her certificates. (Answer, ¶¶ 4, 8). She also stated that she had a 28-year unblemished teaching career. (Answer, p. 1). In the remainder of her Answer, V.R. detailed her long career and stated that the relationship between herself and the injured student continued after V.R. returned to work. (Answer, pp. 2-3). She also claimed that at the time of the incident she had a serious neck injury that required her "to be on pain depressants prescribed by her employer's physician." (Answer, p. 3).

Thereafter, pursuant to *N.J.A.C.* 6A:9-17.7(e), on March 8, 2007, the Board sent V.R. a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute regarding the tenure charges, and thus V.R. 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 certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

V.R. responded to the Hearing Notice on April 5, 2007. That response consisted of the same explanatory information she had appended to her Answer to the Order to Show Cause. (Hearing Response, pp. 1-3.).

At its meeting of May 3, 2007, the State Board of Examiners reviewed the charges and papers V.R. filed in response to the Order to Show Cause. After reviewing her response, the Board of Examiners determined that there were no material facts related to V.R.'s offense since she admitted all of the allegations within the Order to Show Cause, with the exception of the assertion that her conduct warranted the revocation or the suspension of her certificates. Thus, V.R. had not denied the charges in the Order to Show Cause. Accordingly, the Board concluded that her actions as proven in the tenure charges constituted conduct unbecoming a certificate holder.

The Board determined that V.R.'s conduct as set forth in the Order to Show Cause, provided just cause to act against her certificates pursuant to *N.J.A.C.* 6A:9-17.5. Noting that "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), the Board held that "V.R.'s actions, though unintentional, were careless and resulted in a serious injury to a child." The Board further opined that V.R.'s actions in not calling for help and escorting a screaming and bleeding child to the nurse's office was inexcusable and demonstrated a disregard of the standard of care teachers that should uphold. The Board found that "it is one incident that is egregious enough to support a finding of revocation. Thus, the only proper response to V.R.'s breach is revocation."

Accordingly, on May 3, 2007, the Board of Examiners voted to revoke V.R.'s Teacher of Elementary School and Teacher of Nursery School certificates. On June 7, 2007 the Board of Examiners voted to adopt its formal written decision and ordered the revocation of V.R.'s certificates, effective immediately.

V.R. appealed from the Board of Examiner's decision to the State Board of Education. In a decision dated December 5, 2007, the State Board of Education (State Board) reversed the Board of Examiners' decision to revoke V.R.'s certificates. *In the Matter of the Revocation of the Certificates of V.R. By the State Board of Examiners*, Dkt. No. 3034-193 (St. Bd. of Ed. December 5, 2007). Citing a recent Appellate Division decision, *In the Matter of the Revocation of the Teaching Certificate of Stephen Fox*, Docket #A-5021-05T3 (App. Div. August 29, 2007), which found that individuals were entitled to a hearing for presentation of evidence in mitigation of the revocation sanction, the State Board remanded V.R.'s case to the Board for referral to the OAL for a hearing "limited to the issue of the appropriate sanction." (St. Bd. decision, slip op. at 2-3.)

The matter was transmitted to the OAL and a hearing conducted on the sanction issue. On June 1, 2009, ALJ Barry Moscowitz issued his Initial Decision in the case. *In the Matter of the Certificates of V.R.*, Dkt. No. EDE 03084-08 (Initial Decision, June 1, 2009). In that decision, ALJ Moscowitz concluded that revocation would be an unduly harsh penalty: "the nature and gravity of the offense do not warrant the revocation of her teaching certificates under the circumstances." *Id*. at 9. The ALJ noted that V.R.'s actions were not premeditated, cruel or vicious, or done with intent to punish or inflict corporal punishment." *Id.* at 9-10. Rather, the incident was an accident and the student "returned to her classroom for the rest of the year without incident." *Id.* at 10.

ALJ Moscowitz also noted that V.R. presented evidence of mitigation. He stated that she had dedicated her life to teaching, was an exemplary teacher and had demonstrated her devotion both in the documents she submitted as well as in the testimony provided. *Ibid*. The ALJ therefore determined that "this incident was not sufficiently flagrant to warrant the revocation of her teaching certificates" and ordered the case dismissed. *Id*. at 10-11. He did, however, also order that V.R. submit to a medical and psychiatric evaluation before she returned to teaching. *Id.* at 11.

The Deputy Attorney General (DAG) representing the Board of Examiners submitted Exceptions and V.R. submitted Reply Exceptions. In her Exceptions, the DAG argued that V.R.'s conduct warranted a more stringent penalty than that imposed by the ALJ. (Exceptions, pp. 3-6.) The DAG stated that V.R.'s behavior had already been deemed to be unbecoming conduct and that the only issue remaining for the ALJ was one of penalty. (Exceptions, p. 4.) Since V.R.'s actions had resulted in injury to her seven-year-old student, according to the DAG, "action should be taken against V.R.'s certificates." (Exceptions, p. 5.)

In her reply, V.R. argued that the Board of Examiners should give deference to the fact-finding and conclusions of law of ALJ Moscowitz. (reply Exceptions, pp. 3-4.) V.R. claimed that after a serious work-related injury in 2002 she was never the same and that, on the day the student was injured, V.R. was taking a new and different medication prescribed by the district's doctor. (Reply Exceptions, p. 4.) She argued that "case law recognizes that unblemished careers, lack of intent to harm and premeditation, are matters taken into consideration when assessing penalties." (Reply Exceptions, p. 6.) Accordingly, V.R. contended that due to her prior injuries, several surgeries, continuing pain and loss of job, she had been penalized enough and should be allowed to retain her certificates. (Reply Exceptions, p. 6.)

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of October 22, 2009, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the decision, Exceptions and Reply Exceptions and the issues raised therein, the Board voted to adopt the Initial Decision, with modification. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, ALJ Moscowitz found that V.R. was a dedicated teacher with a long, unblemished record, who injured her student by accident. (Initial Decision, slip op. at 9-10.) V.R. was taking new pain medication prescribed by her Board's doctor for a serious injury she had sustained while teaching several years before and had had two surgeries to correct, to no avail. (Initial Decision, slip op. at 6-7.) Her relationship with the injured student continued uneventfully for the remainder of the school year. (Initial Decision, slip op. at 10.) In view of these extenuating and mitigating circumstances, the Examiners therefore agree with the ALJ's conclusion that the Order to Show Cause must be dismissed and no action taken against V.R.'s certificates. (Initial Decision, slip op. at 11.)

However, the Board modifies the Initial Decision insofar as it requires V.R. to undergo a psychiatric or medical evaluation before she can return to teaching. While the record reflects this is a prerequisite to which V.R. agreed, the ALJ did not impose clear conditions as to how those exams should be conducted. In light of that deficiency and without support in the record, the Board eliminates that requirement.

Accordingly, on October 22, 2009, the Board of Examiners voted to adopt the Initial Decision with modification and dismiss the Order to Show Cause. On this 2nd day of December 2009, the Board of Examiners formally adopted its written decision to adopt the Initial Decision

in this matter, and it is therefore ORDERED that the Order to Show Cause issued to V.R. is hereby dismissed effective this day.

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Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing:

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