

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
BARBARA HORNER : ORDER OF DISMISSAL  
\_\_\_\_\_ : DOCKET NO: 663-05/01

At its meeting of May 21, 2001, the State Board of Examiners reviewed a settlement of a tenure proceeding forwarded by the Commissioner of Education that had sought to remove Barbara Horner from her tenured position with the Atlantic County Special Services School District (hereafter "District") for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Barbara Horner*, Docket No. 383-12/99 (Commissioner's Decision, December 21, 2000). Horner currently holds a Teacher of the Blind or Partially Sighted certificate, issued in December 1988 and a Teacher of the Handicapped certificate, issued in September 1993.

This case originated in December 1999 when the District certified tenure charges against Horner. The District charged her with corporal punishment or unjustified physical contact, physical or psychological abuse of students or otherwise unbecoming conduct, neglect of duty and insubordination.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). However the case was held in abeyance pending resolution of criminal charges which had been filed against Horner. Horner's criminal charges were downgraded and she pled guilty to violating a municipal ordinance, "creating or causing to be created any disturbance or annoyance to the comfort or repose of any person." After the criminal case was resolved, the parties settled the tenure matter with Horner resigning her tenured position in the District and the District withdrawing the tenure charges. On December 21, 2000 the Commissioner accepted the settlement and referred

the matter to the State Board of Examiners for its consideration. (Commissioner's Decision, slip op. at 2).

Thereafter, on May 21, 2001, the State Board of Examiners issued Horner 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 alleged in the tenure proceeding.

The Board sent Horner the Order to Show Cause by regular and certified mail on March 12, 2002. The Order provided that Horner's Answer was due within 30 days. Horner filed an Answer on April 1, 2002. In her Answer Horner denied all of the allegations of wrongdoing alleged in the Order to Show Cause. (Answer, ¶¶ 1-6). Horner also claimed that her municipal charges had been downgraded to a charge of loitering to which she pled guilty and paid a fine. (Answer, ¶ 4). In the remainder of her Answer, she added that there was no just cause to seek the revocation or suspension of her certificates. (Answer, ¶ 6).

The Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Israel Dubin heard testimony on several days in March and December 2005, and February 2007. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on June 25, 2008. *In the Matter of the Certificates of Barbara Horner.*, Dkt No. EDE 4050-02 (Initial Decision, June 25, 2008).

ALJ Dubin reviewed the testimony of the witnesses both in support of and against Horner. He found that the eight students in Horner's class during the 1998-99 school year were multiply disabled and functioned at a level much lower than their

chronological ages. (Initial Decision, slip op. at 3-7). Although called to testify on behalf of the Board, the District's school psychologist, Eric Flecken, had only positive things to say about Horner and stated that he "actually thought she was quite a good teacher." (Initial Decision, slip op. at 7-9).

ALJ Dubin also stated that the Board's case "was going to rise or fall on the testimony of the three aides, none of whom had any particular education or training pertaining to, or experience working with, multiply disabled children." (Initial Decision, slip op. at 45). The ALJ found that the three class aides who testified against Horner were consistent in their testimony but ruled that that was not surprising since "they discussed their feelings and impressions with one another and submitted their written statements at approximately the same time...." (Initial Decision, slip op. at 45). The Judge also noted that other individuals had testified about an animus that existed between Horner and another teacher, Anne Finley. (Initial Decision, slip op. at 46). ALJ Dubin noted that it was only after Finley's sister-in-law was assigned to replace one of Horner's classroom aides that these allegations arose against Horner. (Initial Decision, slip op. at 46). The ALJ also thought it significant that in a staff meeting Finley noted that Horner was "too rigid and structured," the same exact words the aides used when they filed their complaints against Horner. (Initial Decision, slip op. at 46). Moreover, the ALJ found that all of Horner's evaluations were excellent and "highlighted the structure, organization, routine, and predictability of her classroom, as well as her warmth and concern for the children as areas of strength." (Initial Decision, slip op. at 47).

In contrast to the witnesses who testified against Horner, the ALJ found that Horner "was an extremely compelling witness who testified with a great deal of emotion,

particularly when talking about the children and their respective disabilities. (Initial Decision, slip op. at 47). He found her to be a dedicated and caring teacher and determined that [f]rom all accounts, save those of the aides, she is a good teacher who would not have willfully engaged in any conduct that could or would have brought harm to her students.” (Initial Decision, slip op. at 47-48).

In ruling on the record before him, ALJ Dubin concluded that “the Board of Examiners has failed to meet its burden of proving by a preponderance of the competent and credible evidence that Barbara Horner physically or psychologically abused any of her students or otherwise engaged in unbecoming conduct.” (Initial Decision, slip op. at 48). The ALJ therefore ordered the Order to Show Cause issued to Horner dismissed. (Initial Decision, slip op. at 48). Neither party filed exceptions to the Initial Decision.

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of September 11, 2008, the Board reviewed the Initial Decision. After full and fair consideration of the decision and the issues raised therein, the Board voted to adopt the Initial Decision. 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 Dubin found that Horner was a passionate and compelling witness. (Initial Decision, slip op. at 47-48). He also determined that the three aides who testified against her had similar testimony because they consulted each other. Moreover, one witness at least was related to another teacher, Anne Finley, who had an expressed animus towards Horner. (Initial Decision, slip op. at 44-47). Even one of the Board’s own witnesses, the District’s school psychologist had only positive things to say about Horner and her teaching methods. (Initial Decision, slip

op. at 7-11). As there was no direct evidence that Horner had engaged in unbecoming conduct, the Examiners agree with the ALJ's conclusion that the allegations in the Order to Show Cause have not been proven and it must be dismissed. (Initial Decision, slip op. at 48.

Accordingly, on September 11, 2008, the Board of Examiners voted to adopt the Initial Decision and dismiss the Order to Show Cause. On this 16th day of October 2008, 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 Barbara Horner is hereby dismissed effective this day.\*

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Robert R. Higgins, Secretary  
State Board of Examiners

\*Decision ratified on January 13, 2009

**Date of Mailing:**

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

RRH:MZ:RMG