

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
PETER LORIA : ORDER OF REVOCATION
_____ : DOCKET NO: 520-04/99-207

At its meeting of April 15, 1999, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Peter Loria from his tenured position with the State-Operated School District of the City of Newark for charges of unbecoming conduct. Loria currently holds a Teacher of English certificate.

This case originated in October 1992 when the State-Operated School District of the City of Newark certified tenure charges against respondent, Peter Loria, a tenured English teacher. In the Matter of the Tenure Hearing of Peter Loria, Docket No. EDU 1364-92 (October 30, 1997)(decision on remand)(slip op. at 1). The district had charged Loria with inefficiency and unbecoming conduct. When the case was transferred to the Office of Administrative Law, the ALJ dismissed the charges of inefficiency because the district had not complied with the statutory and regulatory requirements mandated when bringing such charges. Id. at 2. The hearing went forward on the charges of unbecoming conduct. Loria had been charged with failing to control and discipline his students. He was also cited for failing to teach his students in an effective manner and, on several occasions in any manner whatsoever. The ALJ concluded that Loria was guilty of unbecoming conduct. Id. at 2. The Commissioner affirmed that decision. The State Board of Education reversed, however, and remanded the case. Id. at 2. The State Board found that the ALJ had inappropriately shifted the burden of proof from the district to the

respondent. Accordingly, the State Board ordered that the matter should be reheard under the proper standard. Id. at 2.

Upon remand, the ALJ was also asked to rule on certain monetary matters, including back pay, benefits, and post-judgment interest. Id. at 4-6. (Those matters are not at issue here and will not be discussed in this decision.) The ALJ reviewed the case in light of the proper burden of proof. After an extensive recitation of the testimony, Id. at 6-53, the ALJ found that Loria's failure to discipline or control his students or teach them in an effective manner was conduct unbecoming a teacher. Id. at 54-55. The ALJ further found that it was not in the students' best interests to retain Loria as a teacher. Rather, the ALJ held that Loria had consistently refused to teach his students effectively. Accordingly, the ALJ ordered Loria dismissed from his tenured position. Id. at 55-56.

On January 26, 1998, the Commissioner issued his decision in the matter. He affirmed that ALJ's conclusion that Loria had engaged in unbecoming conduct but reversed the ALJ's dismissal of two of the tenure charges. Commissioner's decision, slip op. at 66-67. The Commissioner disagreed with Loria's contentions that the charges against him were really for inefficiency and not unbecoming conduct. Id. at 70. The Commissioner instead found that Loria had exhibited a long-standing disregard for the fulfillment of his responsibilities and that that disregard had had a profound negative impact upon his students. Id. at 70-72. The Commissioner therefore concluded that such a teaching staff member should not remain in a classroom. Accordingly, the Commissioner affirmed Loria's dismissal. Id. at 72. In his decision, the Commissioner also transferred the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Loria's certificate. Id. at 73.

Loria appealed from the Commissioner's decision to the State Board of Education. On August 7, 1998, the State Board affirmed the Commissioner's decision. State Board of Education decision, slip op. at 1.

Thereafter, on April 15, 1999, the State Board of Examiners issued an Order to Show Cause to Loria as to why his 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 Order to Show Cause was mailed to Respondent by regular and certified mail on May 4, 1999. The Order provided that if respondent desired to file an Answer to the Order that Answer must be filed within 20 days. Loria filed an Answer on May 20, 1999. In his Answer Loria admitted that the district had brought tenure charges against him and that he was dismissed from his tenured employment as a result of the tenure hearing. (Answer, ¶¶ 4-5). He also stated that there was no just cause for the revocation or suspension of his certificate. (Answer, ¶ 6). In the remainder of his Answer, Loria added that he was employed in positions that required a teaching certificate and that he was performing satisfactorily. He therefore argued that there was no reason to deny him the right to continue to hold those positions. (Answer, ¶6).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on July 26, 1999, Loria was sent 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, respondent 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 him and the legal arguments tendered

in his defense, the State Board of Examiners would determine if his offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

After receiving an extension of time, Loria responded to the Hearing Notice on October 18, 1999. In that response, Loria claimed that since his case did not involve any flagrant misbehavior, criminal action, fraud or sexual or emotional abuse of children, there was no valid basis upon which to revoke his certificate (Hearing Response, p. 3). Moreover, Loria also stated that since his dismissal from the State-Operated School District of the City of Newark, he had held at least two teaching jobs that he had performed satisfactorily. He argued that the Board of Examiners should review his performance at these other positions before it decided whether to revoke or suspend his certificate. (Hearing Response, p.4).

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Loria's conduct and his subsequent loss of tenure constitute sufficient predicates for the suspension or revocation of his certificate. At its meeting of February 24, 2000, the State Board of Examiners reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After reviewing Loria's response, the Board of Examiners determined that no material facts related to his offense were in dispute since he had admitted that he was dismissed from his tenured position as a result of a finding of unbecoming conduct and only argued that that finding should not automatically lead to revocation or suspension. Thus, since Loria has not denied the charges in the Order to Show Cause, his unbecoming conduct has been established.

The State Board of Examiners must now determine whether Loria's unbecoming conduct, as set forth in the Order to Show Cause, represents just cause to act against his certificates pursuant to N.J.A.C. 6:11-3.6(a)1. After an independent review of the facts as found in the tenure hearing, we find that it does.

Although Loria admits that the charges of unbecoming conduct led to his loss of his tenure, he is attempting, inappropriately, to revisit the issue of his effectiveness as a teacher here by introducing instances of satisfactory teaching since his dismissal. He is, however, precluded from doing so by the principles of collateral estoppel. See T.W. v. A.W., 224 N.J. Super. 675 (App. Div. 1988). Indeed, the Board of Examiners' focus is on a narrow legal issue: whether Loria's conduct supports one of the regulatory grounds for the revocation or suspension of certificates. What he has done since his dismissal is immaterial to that consideration.

At this time, the State Board of Examiners must articulate once again that the standard for the suspension or revocation of a teaching certificate, although not the same as that used for tenure decisions, is just as exacting. It is a standard that differs only in scope, not depth. In other words, this Board's decisions regarding the loss of a certificate cannot, as Loria suggests, be held to a more stringent standard than those of the Commissioner regarding the loss of tenure. Rather, the Board of Examiners' view is more "global" since it must make its decisions in the context of removing a teacher from all classrooms in the state and not just one district. See In the Matter of the Revocation of the License of Polk, 90 N.J. 550 (1982)(evidentiary standard to be used in an administrative proceeding regarding the revocation or suspension of a professional license is a fair preponderance of the evidence and not a higher standard.)

In that vein, this Board must now determine whether Loria should be allowed to teach in any classroom in this State. It agrees with him that that requires more than a cursory look at his underlying tenure case. In fact, this Board conducts its own independent review of the facts and thereafter renders an independent judgment. The ultimate responsibility for safeguarding all of New Jersey's public school children rests with the Board of Examiners and it takes that responsibility seriously. Furthermore, it must maintain the high standards of the teaching profession.

It is that acknowledgment of its duty that compels this Board to keep proven incompetent teachers like Loria out of all our State's classrooms. After its review of the record in this case, this Board cannot help but conclude that Loria's deficiencies render him unfit to serve the children of New Jersey in a teaching capacity any longer. In fact, Loria's failure to respond to the tenure charges in a meaningful way, see In the Matter of the Tenure Hearing of Peter Loria, Docket No. EDU 1364-92 (slip op. at p. 54), does not bolster his credibility when he claims that he is an effective teacher. Thus, based on the facts here, the Board of Examiners believes that the appropriate sanction is revocation.

Accordingly, it is therefore ORDERED that Peter Loria's Teacher of English certificate be revoked on this 24th day of February 2000. It is further ORDERED that Loria return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: May 17, 2000

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

IBG:MZ:kb: Peter Loria