

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
BRIAN EILERT : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 586-11/00-267

At its meeting of June 14, 2001, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Brian Eilert from his tenured position with the Board of Education of Hazlet for charges of unbecoming conduct. Eilert currently holds Teacher of Social Studies, Teacher of English and Teacher of Elementary School certificates.

This case originated when the Hazlet Board of Education certified tenure charges against Eilert for his conduct arising from an assault on one of his students. The district charged him with unbecoming conduct for encouraging students in his class to kick another student who had become entangled in his desk while attempting to pick up something from the floor. All witnesses, including Eilert, had agreed that he had remained at his desk during the incident.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Bruce R. Campbell heard testimony on several days in December 1999. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on February 14, 2000.

In that decision ALJ Campbell found that Eilert had sat at his desk while several students were invited by him to kick another student who was on the floor entangled in his desk. The kicked student later went to the nurse's office and came back to Eilert's class with an ice pack applied to his shoulder where he had been injured. (Initial Decision, slip op. at 2).

After considering all the testimony, ALJ Campbell found that Eilert's conduct was more than improper. The Judge found that the "abandonment of decent judgment shown here is outrageous." (Initial Decision, slip op. at 7). Judge Campbell also noted that although Eilert stated he invited other pupils to kick the downed student "in jest," he did nothing to stop them from doing so when they actually kicked the pupil. Judge Campbell found this behavior "shocking to the conscience." (Initial Decision, slip op. at 7-8).

In considering the appropriate penalty, the Judge examined Eilert's record. The ALJ found that Eilert's observation reports "indicate a long-standing deficiency in the area of pupil discipline." (Initial Decision, slip op. at 9). Notwithstanding that record, Judge Campbell concluded that this one incident was sufficiently flagrant to warrant Eilert's removal from his tenured position. (Initial Decision, slip op. at 9). Thus, based on his review of the entire record, the ALJ concluded that Eilert's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 9). Consequently, the ALJ ordered Eilert dismissed from his tenured employment.

In a decision dated April 3, 2000, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Eilert. The Commissioner agreed with the ALJ that the local board had proven its case against Eilert with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 14). The Commissioner found that the penalty of termination was more than amply supported by the record even without relying on previous instances of Eilert's questionable behavior. (Commissioner's Decision, slip op. at 14). Accordingly, the Commissioner affirmed Eilert's removal from his tenured employment with the Hazlet Board of Education and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Eilert's certificates.

Thereafter, on November 2, 2000, the State Board of Examiners issued Eilert an Order to Show Cause as to why his certificates should not be or suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board of Examiners mailed the Order to Show Cause to Eilert by regular and certified mail on January 19, 2001. The Order provided that an Answer must be filed within 20 days. Eilert filed an Answer on February 14, 2001. In his Answer Eilert 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, ¶¶ 1,5.) He also stated that he did not instruct other students to kick a student on the floor, but rather answered "sure" when a student playfully asked if he could kick that student. Eilert stated that he was surprised when other students went over and kicked the student on the floor. (Answer, ¶¶ 7a &c.) In the remainder of his Answer, Eilert added that the student on the floor never complained of injury or indicated that he needed help. Eilert said that the entire incident was a "teasing, playful interaction" initiated when the student threw himself on

the floor. He indicated that his comments were also playful and understood as such by the students. (Answer, ¶ 7e.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on March 8, 2001, the Board of Examiners sent Eilert 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, Eilert 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 certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Eilert responded to the Hearing Notice on April 5, 2001. In that response, Eilert reiterated his claim that the entire incident was playful and that he never instructed students to kick one of their peers. He stated that the class understood that the incident was a joke and that the situation occurred during the last period of the day and near to the end of the school year (Hearing Response, p. 5.). He also stated that the student involved was not injured and that although he got an ice pack from the nurse, he was sent immediately back to class. Eilert admitted that his actions showed a lack of good judgment, but that it was a single occurrence that was not intentional. He finally argued that that his conduct hardly rose to the level which warranted revocation of all three of his teaching certificates. (Hearing Response, p. 6.)

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Eilert's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of June 14, 2001, the State Board of Examiners reviewed the charges and papers Eilert filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Eilert's offense were in dispute since Eilert admitted taking no action to stop the incident. Thus, Eilert has not denied the charges in the Order to Show Cause. Accordingly, his actions regarding his grossly negligent supervision of his students constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Eilert's offense 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. We find 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. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (Sup. Ct. 1943), aff'd. 131 N.J.L. 326 (E. & A. 1944). "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 Eilert's behavior in this case deviates far from the norm of a teacher as a role model. His encouragement and endorsement of bullying behavior in his classroom and his attempt to pass it off as a joke speaks volumes about his skewed view of what a teacher should be. This "vision" does not belong in a classroom. Thus, the only proper response to Eilert's breach is revocation.

Accordingly, it is therefore ORDERED that Brian Eilert's Teacher of Social Studies, Teacher of English and Teacher of Elementary School certificates be revoked on this 14th day of June 2001. It is further ORDERED that Eilert return his certificates to the Secretary of the State Board of Examiners, Office of Licensing, PO Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

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Secretary  
State Board of Examiners

Date of Mailing: November 27, 2002

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

IBG:MZ:es:Eilert, Bruce