

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
RANDALL DUNHAM : ORDER OF SUSPENSION
_____ : DOCKET NO: 598-12/00

At its meeting of December 7, 2000, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Randall Dunham from his tenured position with the Board of Education of Point Pleasant for charges of unbecoming conduct. Dunham currently holds a Teacher of Elementary School certificate.

This case originated when the Point Pleasant Board of Education certified tenure charges against respondent, Randall Dunham. Dunham was employed as an Elementary School Teacher. The district charged him with unbecoming conduct for leaving vulgar and inappropriate messages on the answering machine of two pupils in the district.

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 October 1999. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on January 26, 2000.

In that decision ALJ Campbell found that Dunham had indeed made several inappropriate phone calls to these two students and had left vulgar messages on their answering machine. In addition, Judge Campbell found that Dunham was intoxicated when he made the phone calls over a four-hour period even though he was on medication which contraindicated alcohol use. (Initial Decision, slip op. at 24).

After considering all the testimony, ALJ Campbell found that Dunham's conduct was improper. Moreover, Judge Campbell credited the testimony of the witnesses against Dunham as to his behavior and discredited some of Dunham's testimony in his behalf. The ALJ therefore

concluded that the Board had proven the charge of unbecoming conduct against Dunham. (Initial Decision, slip op. at 24).

In considering the appropriate penalty, Judge Campbell examined Dunham's behavior and found it inexcusable. The ALJ found that Dunham used the two children "as a means of getting at his perceived tormentor [their father]" who was dating Dunham's ex-wife. (Initial Decision, slip op. at 25). Thus, based on his review of the entire record, the ALJ concluded that Dunham's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 25-26). Consequently, the ALJ ordered Dunham dismissed from his tenured employment.

In a decision dated April 17, 2000, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Dunham. The Commissioner agreed with the ALJ that the local board had proven its case against Dunham with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 35). The Commissioner found that Dunham's conduct was serious and highly unprofessional. (Commissioner's Decision, slip op. at 35). In addition, the Commissioner rejected Dunham's contention that since he was under the influence of alcohol and medication, he could not act intentionally, and therefore was not culpable. (Commissioner's Decision, slip op. at 36.) Accordingly, the Commissioner affirmed Dunham's removal from his tenured employment with the Point Pleasant 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 Dunham's certificate. (Commissioner's Decision, slip op. at 39-40.) Dunham appealed from the Commissioner's decision to the State Board of Education which affirmed the Commissioner's decision on September 6, 2000.

Thereafter, on November 15, 2000, the State Board of Examiners issued Dunham an Order to Show Cause 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 Board of Examiners sent Dunham the Order to Show Cause by regular and certified mail on February 26, 2001. The Order provided that an Answer must be filed within 20 days. Dunham filed an Answer on March 19, 2001. In his Answer Dunham admitted that the district had brought tenure charges against him. Dunham also admitted that the ALJ and Commissioner of Education had found that he had engaged in conduct unbecoming a teaching staff member which warranted his removal from his tenured position. (Answer, ¶¶ 3-4). In the remainder of his Answer, Dunham denied that there was just cause to suspend or revoke his teaching certificate. (Answer, ¶6.) In addition to his Answer, Dunham submitted copies of a letter he submitted to the Division of Pensions when seeking full retirement benefits, a copy of Pensions' decision granting such benefits and a copy of the brief he had submitted when his tenure case was before the State Board of Education.

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on April 19, 2001, the Board of Examiners sent Dunham 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, Dunham 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.

Dunham responded to the Hearing Notice on May 18, 2001. In that response, Dunham stated that he wished to rely upon the documents he had previously submitted to the Board of Examiners when filing his Answer. Dunham also reiterated that leaving phone messages on his wife's boyfriend's answering machine outside of the school setting did not negate his 25 years of exemplary service in Point Pleasant. (Hearing Response, p. 1.) He also stated that the Division of

Pensions had found all of his service honorable when awarding him his pension benefits. (Hearing Response, p.2.)

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Dunham's conduct constitutes conduct unbecoming a certificate holder. At its meeting of June 14, 2001, the State Board of Examiners reviewed the charges and papers Dunham filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Dunham's offense were in dispute since he admitted that he had left the answering machine messages albeit while in an incapacitated state. The Examiners find that these actions in leaving inappropriate and vulgar messages on two students' answering machine constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Dunham's offense as set forth in the Order to Show Cause, represents just cause to act against his certificate 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 (S. 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 Dunham's actions were inimical to the interests of the students affected. Furthermore, his inability to take responsibility for his actions speaks volumes about his status as a role model for students. On the other hand, the Board of Examiners is mindful of Dunham's long, unblemished record. Thus,

balancing all of the factors at issue here, the Board has determined that the proper response to Dunham's breach is a five-year suspension of his teaching certificate.

Accordingly, it is therefore ORDERED on this 14th day of June 2001 that Randall Dunham's Teacher of Elementary School certificate be suspended effective July 1, 2001 for a period of five years ending on July 1, 2006. It is further ORDERED that Randall Dunham return his certificate 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.

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:Dunham, Randall