

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF: STATE BOARD OF EXAMINERS
CATHERINE COOPER : ORDER OF SUSPENSION
_____ : DOCKET NO: 642-06/01-287

At its meeting of June 14, 2001, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Catherine Cooper from her tenured position with the Board of Education of Bridgeton for charges of unbecoming conduct. Cooper currently holds Teacher of Social Studies and Teacher of the Handicapped certificates.

This case originated on August 15, 2000 when the Bridgeton Board of Education certified tenure charges against respondent, Catherine Cooper. Cooper was employed as a special education teacher. The district charged her with unbecoming conduct for her treatment of several of her classified students. Cooper had allegedly told two students, J.H. and J.T., that if they wished to go on a class trip from which they had been banned, they would have to "kiss [her] butt." J.H. apparently did so and was thereafter subject to school-wide ridicule.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Joseph Lavery heard testimony on several days in November 2000. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on February 2, 2001.

In that decision ALJ Lavery found that Cooper had told J.T that if he wanted to atone for his disruptive class behavior and go on a class trip he would have to kiss her butt. Lavery held that Cooper did not mean the expression in the literal sense. Another student, J.H., asked if Cooper was serious. She stated she was, and presented her

buttocks twice to J.H. and he made contact with her jeans over the right rear pocket. This event took place in front of Cooper's special education class. ALJ Lavery held that Cooper did not intend to humiliate J.H. and meant her comment as a joke. Afterward, Cooper recounted the incident to colleagues on several occasions. (Initial Decision, slip op. at 9-10).

After considering all the testimony, ALJ Lavery found that Cooper's conduct was improper. (Initial Decision, slip op. at 11). The ALJ therefore concluded that the Board had demonstrated that the charge of unbecoming conduct of a teaching staff member brought against respondent Cooper was true. (Initial Decision, slip op. at 11).

In considering the appropriate penalty, the Judge noted that a single act, if sufficiently flagrant, justified a teacher's removal from her tenured position. (Initial Decision, slip op. at 11 citing In re Fulcomer, 93 N.J. Super 404, 421 (App. Div. 1967.) Judge Lavery determined that what occurred here justified Cooper's removal. He focused on the devastating fallout on J.H.: "He remains to this day isolated in a home-study setting, as a consequence of respondent's poor judgment. Respondent exposed an emotionally disturbed student to the ridicule, embarrassment and shame which followed this bizarre encounter." (Initial Decision, slip op. at 12). Thus, based on his review of the entire record, the ALJ concluded that Cooper's breach was too substantial to allow for her continued employment in the district. (Initial Decision, slip op. at 12). Consequently, the ALJ ordered Cooper dismissed from her tenured employment.

In a decision dated March 22, 2001, the Commissioner of Education affirmed the ALJ's Initial Decision for the reasons expressed therein as to the tenure charges against Cooper. (Commissioner's Decision, slip op. at 15). Accordingly, the Commissioner

affirmed Cooper's removal from her tenured employment with the Bridgeton 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 Cooper's certificates.

Thereafter, on June 14, 2001, the State Board of Examiners issued an Order to Show Cause to Cooper as to why her 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 sent Cooper the Order to Show Cause by regular and certified mail. The Order provided that an Answer must be filed within 20 days. Cooper filed a timely Answer. In her Answer she admitted that the district had brought tenure charges against her. She also denied that her conduct "in any way warranted the penalty of dismissal or the revocation or suspension of her teaching certificates." (Answer, ¶ 5). In the remainder of her Answer, Cooper alleged that there was substantial credible evidence of mitigating factors such as her good teaching record prior to this incident, her excellent reputation among her colleagues, her dedicated service to the community and youth and her excellent teaching performance subsequent to the allegations.

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on May 15, 2002, the Board sent a hearing notice by regular and certified mail to Cooper. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, Cooper 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.

Cooper responded to the Hearing Notice on August 2, 2002. In that response, Cooper admitted that she had used poor judgment in the incident. She stated that she regretted her actions and said her remark was clearly inappropriate. She also added that her actions were never meant to humiliate her students nor were they meant to infer any sexual content. (Hearing Response, p. 2.). She also focused on her unblemished record and submitted many performance evaluations she had received from the district prior to the incident. Cooper also recounted her many volunteer efforts including the work she had performed for the Girl Scouts and the American Red Cross. (Hearing Response, p. 3.)

After losing her tenured position with Bridgeton, Cooper secured a job with the Vineland School District. In her submission, she included evaluations from that district as well. (Hearing Response, pp. 5-6.) Cooper also included many letters of reference to attest to her love of teaching and her reputation in her community. (Hearing Response, pp. 8-9.) Finally, Cooper argued that her conduct did not warrant the severe penalty of revocation or suspension.

On August 20, 2002, Cooper submitted an additional response in light of a recent New Jersey Supreme Court decision, In the Matter of the License of Fanelli, 174 N.J. 165 (2002). Cooper argued that this decision mandates her entitlement to a plenary hearing because the instant matter involves the revocation or suspension of her teaching certificates.

Fanelli involved a license revocation proceeding before the New Jersey State Board of Medical Examiners (“Medical Examiners”) that was initiated after appellant, Dr. Fanelli, pled guilty to conspiracy to unlawfully abstract and convert funds of an employee benefit plan to his own use in violation of federal law. Id. at 168-69. After issuing a Provisional Order revoking Fanelli’s license, the Medical Examiners denied Fanelli’s request for an evidentiary hearing permitting him to submit mitigating evidence on the issue of whether his license should be revoked. Id. at 169-70. The Medical Examiners found that Fanelli’s plea of guilty to the conspiracy charge precluded him from arguing that he was not part of the conspiracy. Accordingly, the Medical Examiners issued a Final Order of Discipline revoking Fanelli’s license to practice medicine and surgery in the State of New Jersey pursuant to N.J.S.A. 45:1-21(e) and (f). Id. at 170.

The Supreme Court held that N.J.S.A. 52:14B-11 and -9 provided Fanelli a statutory right to a plenary hearing because the matter involved a license revocation. Id. at 173-74. Significantly, the Court found that there were contested adjudicative facts in Fanelli’s appeal, specifically, whether Fanelli was involved in the conspiracy and had actual knowledge of the embezzlement. Id. at 174. As such, the Court concluded that a plenary hearing was necessary to determine whether Fanelli had been convicted of a crime involving moral turpitude. Ibid.

At its meeting of December 12, 2002, the State Board of Examiners reviewed the arguments and papers Cooper filed in response to the Order to Show Cause. Initially, the Board distinguished Cooper’s situation from that presented in Fanelli. While it is true that this matter involves the revocation or suspension of Cooper’s

teaching certificate, unlike Fanelli there are no contested adjudicative facts. In fact, Cooper was provided a plenary hearing pursuant to N.J.S.A. 52:14B-11 and -9 involving tenure charges the Board of Education of the City of Bridgeton brought against her which resulted in a decision issued by the Commissioner, In the Matter of the Tenure Hearing of Catherine Cooper, Docket No. 291-8/00 (March 22, 2001). Although Cooper's loss of tenure cannot be used as the basis of a certification suspension or revocation, the conduct established in the tenure hearing can be. In the Matter of the Certificates of Theresa Lucarelli, Docket No. 2-99 (May 5, 1999).

Furthermore, the doctrine of collateral estoppel bars Cooper from relitigating the issues involved in In the Matter of the Tenure Hearing of Catherine Cooper. In order for the doctrine of collateral estoppel to apply and conclude an issue against a party in a particular action, the parties to that action need not be identical to the parties who litigated the issue in a prior proceeding. Eatough v. Board of Medical Examiners, 191 N.J. Super. 166, 175 (App. Div. 1983). However, the party precluded from relitigating the issue must have had a full and fair opportunity to litigate the issue in the first action. Ibid. In the instant matter, Cooper was afforded a full and fair opportunity to litigate the contested issues and vigorously defend herself in the tenure proceeding. As such, Cooper is collaterally estopped from relitigating the issues involved in the tenure proceeding.

In sum, the Board finds that the Supreme Court's decision in Fanelli does not control this case because (1) there are no contested adjudicative facts involved; (2) Cooper was previously provided a plenary hearing pursuant to N.J.S.A. 52:14B-11 and -9 involving tenure charges brought against her by the Board of Education of the City of

Bridgeton which form the basis of the Board's action in the instant matter; and (3) Cooper is collaterally estopped from relitigating the issues involved in the tenure proceeding.

The threshold issue before the State Board of Examiners in this matter therefore is to determine whether Cooper's conduct which resulted in her subsequent loss of tenure constitutes conduct unbecoming a certificate holder. After reviewing her response, the Board of Examiners determined that no material facts related to Cooper's offense were in dispute since she had admitted to the actions. Thus, Cooper has not denied the charges in the Order to Show Cause. Accordingly, her actions in telling her students to "kiss her butt" and then allowing them to do so (even in pantomime) constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Cooper's offense as set forth in the Order to Show Cause, represents just cause to act against her 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 (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 Cooper's

conduct is beyond the pale of the behavior expected of role models. While she may view her actions merely as “poor judgment”, that lapse created deleterious and long-lasting consequences for at least one of her students. Nevertheless, Cooper has demonstrated that prior to this incident she was an excellent teacher. Thus, balancing all of the factors at issue here, the Board has determined that the proper response to Cooper’s breach is a suspension of her teaching certificates.

Accordingly, it is therefore ORDERED that Catherine Cooper’s Teacher of Social Studies and Teacher of the Handicapped certificates be suspended effective this 12th day of December 2002 until June 30, 2004. It is further ORDERED that Cooper return her certificates to the Secretary of the State Board of Examiners, Office of Licensure and Credentials, PO Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Joan E. Brady, Secretary
State Board of Examiners

Date of Mailing: April 10, 2003

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