

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
DONALD HAMMARY : ORDER OF REVOCATION
_____ : DOCKET NO: 0304-210

At its meeting of February 26, 2004, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Donald Hammary from his tenured position with the Asbury Park Board of Education for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Donald Hammary*, Docket No. 327-8/01 (Commissioner's Decision, November 10, 2003). Hammary currently holds a Teacher of Social Studies certificate, issued in February 1981, a Teacher of the Handicapped certificate, issued in October 1983 and a Student Personnel Services certificate, issued in June 1986.

This case originated on August 17, 2001, when the Asbury Park Board of Education certified tenure charges against respondent, Donald Hammary. At the time the tenure charges were certified, Hammary was employed as a guidance counselor in the district. The district charged him with unbecoming conduct for uttering offensive racial remarks during a class presentation, failing to counsel children and, on another occasion, uttering profanity and using excessive force to discipline a student.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Robert Miller heard testimony over 20 days from June 25, 2002 until April 11, 2003. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on September 24, 2003.

In that decision, ALJ Miller found that Hammary's testimony was not credible. Rather, he concluded that the district had presented credible witnesses regarding Hammary's conduct. (Initial Decision, slip op. at 3-4).

After considering all the testimony, ALJ Miller found that Hammary had made some disparaging remarks during a presentation he gave to a third grade class on the issue of racism. (Initial Decision, slip op. at 5). Hammary had stated that "...the real reason we have racism is because of the white race. They don't want to be depurified." (Initial Decision, slip op. at 5). The ALJ also found that Hammary had not counseled students during a three-hour period when he had scheduled 10 students for counseling. (Initial Decision, slip op. at 6-8). At the hearing, Hammary did not deny that he failed to counsel any of the students on the day in question. (Initial Decision, slip op. at 8).

ALJ Miller also reviewed the testimony regarding Hammary's interaction with a classified student, K.R. (Initial Decision, slip op. at 8-12). During an incident at dismissal time, Hammary pushed K.R. and repeatedly yelled at him after K.R. uttered a racial epithet about Hammary. (Initial Decision, slip op. at 10-11). Hammary pursued K.R. into the school building and continued to verbally abuse him, eventually grabbing him by the collar and pushing him into a wall. (Initial Decision, slip op. at 11). Much of this incident occurred in the presence of teachers, staff, parents and other students. (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 it had brought against Hammary was true. (Initial Decision, slip op. at 13).

In considering the appropriate penalty, ALJ Miller determined that Hammary's conduct "demonstrated his unfitness to be a teacher." (Initial Decision, slip op. at 14).

Thus, based on his review of the entire record, the ALJ concluded that Hammary's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 15). Consequently, the ALJ ordered Hammary dismissed from his tenured employment. (Initial Decision, slip op. at 15).

In a decision dated November 10, 2003, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Hammary. (Commissioner's Decision, slip op. at 23). The Commissioner agreed with the ALJ that the local board had proven its case against Hammary with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 22). The Commissioner found that the ALJ's credibility determinations were entitled to deference and that "the charges and proofs established herein reflect conduct which cannot be tolerated in a school setting, warranting respondent's loss of his tenured position." (Commissioner's Decision, slip op. at 23). Accordingly, the Commissioner affirmed Hammary's removal from his tenured employment with the Asbury Park Board of Education and transmitted the matter to the State Board of Examiners for appropriate action regarding Hammary's certificates. (Commissioner's Decision, slip op. at 23).

Thereafter, on February 26, 2004, the State Board of Examiners issued Hammary an Order to Show Cause as to why his certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

After repeated attempts to locate Hammary, the Board sent him the Order to Show Cause by regular and certified mail on August 16, 2005. The Order provided that Hammary's Answer was due within 30 days. The certified mail receipt was signed and

returned. The regular mail copy was not returned. Hammary did not respond to the Order. Thereafter, on September 26, 2005 the Board sent him a second notice by regular and certified mail. Again, he signed for the certified mail and the regular mail copy was not returned. Hammary did not respond to the second notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Hammary's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. Since Hammary did not respond to the Order to Show Cause, the State Board of Examiners had no responsive pleading to consider in the hearing process. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding. *N.J.A.C. 6A:9-17.7(c)*. Since Hammary's conduct, as set forth in the Order to Show Cause, is admitted, the Board of Examiners must now decide whether that constitutes a sufficient basis to act against his certificates pursuant to *N.J.A.C. 6A:9-17.7(c)*. The Board finds 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. 6A:9-17.5*. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 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 Hammary's conduct regarding K.R. negates any claim he can have to self-restraint. This volatility

does not belong in a school setting. Furthermore, his racist comments and failure to perform his professional responsibilities as a counselor reinforce the conclusion that Hammary should no longer be a certificate holder. Thus, the only proper response to Hammary's breach is revocation.

Accordingly, it is therefore ORDERED that Donald Hammary's Teacher of Social Studies, Teacher of the Handicapped and Student Personnel Services certificates be revoked on this 8th day of December 2005. It is further ORDERED that Hammary return his certificates to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: DECEMBER 8, 2005

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