

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
BRENDA KOONCE : ORDER OF DISMISSAL
_____ : DOCKET NO: 0405-255

At its meeting of May 5, 2005, the State Board of Examiners (Examiners) reviewed information the Division of Youth and Family Services (DYFS) had submitted regarding Brenda Koonce. DYFS had investigated allegations that Koonce had physically abused a student when she attempted to discipline the student who had started an argument with another student. Koonce had taken hold of the student by the shirt in the neck area and in the process grabbed some keys he was wearing on a shoestring. Koonce tried to confront the student face to face and took hold of his cheeks with her fingers. When the student continued to resist, a physical altercation ensued. When the student jumped up from his chair, Koonce pushed him back into his seat and he sustained minor injuries. While the DYFS report did not substantiate allegations of abuse against Koonce, it did raise concerns regarding her conduct. Koonce currently holds a Teacher of Nursery School certificate and a Teacher of Elementary School certificate, both issued in June 1977.

At its May 5, 2005, meeting, the Examiners voted to issue Koonce an Order to Show Cause as to why her certificates should not be suspended or revoked. The Examiners mailed the Order to Koonce by regular and certified mail on May 18, 2005. The Order provided that Koonce had 30 days to respond. Koonce responded to the Order on June 18, 2005. In that Answer, she claimed she was attempting to separate two students who were fighting. (Answer, p. 1). One of the students began to hit and scratch her arm and she almost fell on to him. (Answer, p. 1). Another teacher entered and removed the student to a different part of the room. (Answer, pp. 1-2). Koonce went over to the student to try to calm him when he jumped up out of his seat with a

balled fist. (Answer, p.2). Koonce stated that she reacted by “pushing him back down into his seat.” (Answer, p.2). She added that she never intended to physically harm the student and that she felt horrible about the incident “because this is not the legacy that I want to leave.” (Answer, p. 2). Notwithstanding Brown’s denials, the Examiners found probable cause to consider the suspension or revocation of her certificates.

The Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Stephanie Wauters heard testimony on November 15, 2005. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on January 25, 2007. *In the Matter of the Certificates of Brenda Koonce.*, Dkt No. EDE 6300-05 (Initial Decision, January 25, 2007).

After considering the testimony, ALJ Wauters found that on Koonce “physically separated two students who were arguing and about to fight.” (Initial Decision, slip op. at 3). One of the students kicked Koonce and there was a struggle. (Initial Decision, slip op. at 3). When the student jumped up at Koonce, she pushed him back in an effort to protect herself. (Initial Decision, slip op. at 3). Both the student and Koonce sustained scratches from the altercation. (Initial Decision, slip op. at 3). The ALJ found that all three witnesses who testified in the case both for the State and for Koonce were credible and had “no inconsistencies in their testimonies.” (Initial Decision, slip op. at 3).

In ruling on the allegation that Koonce’s physical intervention constituted unbecoming conduct, ALJ Wauters concluded that her intervention “was reasonably justified to quell a disturbance which threatened physical injury to others and for the purpose of self-defense.” (Initial Decision, slip op. at 4). The ALJ opined that had Koonce not taken any action she would be neglecting her duty to protect students and setting a “bad example for teachers to not

intervene in student fights.” (Initial Decision, slip op. at 4). ALJ Wauters held that the State had not met its burden of proof to establish corporal punishment and unbecoming conduct. (Initial Decision, slip op. at 4).

ALJ Wauters found that “no unbecoming conduct exists and that no revocation or suspension of Ms. Koonce’s teaching certificates is **JUSTIFIED.**” (Initial Decision, slip op. at 4, emphasis in original). The ALJ therefore ordered the Order to Show Cause issued to Koonce dismissed with prejudice. (Initial Decision, slip op. at 5).

The Deputy Attorney General (DAG) representing the Board of Examiners filed exceptions to the Initial Decision. In those exceptions she argued that the ALJ’s reasoning about Koonce’s duty to intervene might be interpreted “to obligate teachers to intervene physically under any circumstance at all whenever students are fighting.” (Exceptions, pp. 1-2). The DAG claimed that “[b]oth a proclivity toward physical intervention with students and a reluctance to take any action whatsoever should be discouraged.” (Exceptions, p. 2). The DAG urged that teachers should assess student conflicts “on a case-by-case basis and tak[e] only whatever action is necessary to quell the disturbance.” (Exceptions, p. 2). Koonce did not file reply exceptions.

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of March 29, 2007, the Board reviewed the Initial Decision. After full and fair consideration of the decision and the issues raised therein, the Board voted to adopt the Initial Decision. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, ALJ Wauters found all of the testimony consistent in affirming that Koonce was protecting herself from an altercation with an out-of-control student. (Initial Decision, slip op. at 2-3). As there was no direct evidence that Koonce had physically intervened in an inappropriate

manner, the Examiners agree with the ALJ's conclusion that the allegations in the Order to Show Cause have not been proven and it must be dismissed. (Initial Decision, slip op. at 5).

Accordingly, on March 29, 2007, the Board of Examiners voted to adopt the Initial Decision and dismiss the Order to Show Cause. On this 3rd day of May 2007, the Board of Examiners formally adopted its written decision to adopt the Initial Decision in in this matter, and it is therefore ORDERED that the Order to Show Cause issued to Brenda Koonce is hereby dismissed effective this day.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: MAY 4, 2007

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