

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
J.M.¹ : ORDER OF DISMISSAL
_____ : DOCKET NO: 0607-198

At its meeting of May 3, 2007, the State Board of Examiners reviewed an investigative report issued by the Department of Children and Families' (DCF) Institutional Abuse Investigation Unit (IAIU) that substantiated physical abuse allegations against J.M. According to the report, when two students in J.M.'s class were flicking a paper football back and forth J.M. asked them to stop. When they would not, he grabbed the paper from one of the students and in doing so, struck her in the face with the back of his hand, injuring her nose. At the May 2007 meeting the Board of Examiners issued J.M. an Order to Show Cause why his certificates should not be revoked or suspended. J.M. currently holds a Teacher of Biological Science Certificate of Eligibility With Advanced Standing, issued in November 2000 and a Teacher of Biological Science, issued in May 2002.

The Board sent J.M. the Order to Show Cause by regular and certified mail on May 8, 2007. The Order provided that J.M.'s Answer was due within 30 days. J.M. filed an Answer on June 8, 2007. In his Answer J.M. only admitted that there was a pending appeal of a DCF finding against him. (Answer, ¶ 3). He added that the certification case could not proceed until that appeal was resolved. (Answer, Separate Defense.)

Upon receipt of J.M.'s Answer, the Board transmitted the case to the Office of Administrative Law (OAL). On January 9, 2008 the OAL entered an order consolidating the two matters and declaring that DCF had the predominant interest in determining

¹ As the record in this matter was sealed, the respondent will be referred to by initials.

whether abuse had occurred. Administrative Law Judge (ALJ) Barry Frank heard testimony on April 15 and 16, 2008. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on September 15, 2008. *Department of Children and Families-Legal Affairs Unit, Institutional Abuse Investigation Unit v. J.M. and In the Matter of the Certificates of J.M.*, Dkt. No. HSV 00313-07 (September 11, 2008) (Consolidated).

In that decision ALJ Frank found that J.M. had asked a student, T.S., to leave the classroom for being disruptive. (Initial Decision, slip op. at 10). Upon returning to the classroom approximately 20 minutes later, T.S. and another student, S.G., began throwing a paper football and “consistently refused J.M.’s instructions to stop.” (Initial Decision, slip op. at 10.) When J.M. attempted to grab the paper football in flight, he struck T.S. in the face. (Initial Decision, slip op. at 10.)

After considering all the testimony, ALJ Frank concluded that “a finding of ‘substantiated’ abuse must be affirmed.” (Initial Decision, slip op. at 11). Judge Frank noted that T.S.’s behavior did not warrant physical intervention and that J.M. could have imposed additional discipline rather than take the “dangerous action of attempting to physically intervene.” (Initial Decision, slip op. at 12). Although the ALJ did not find the physical contact was intentional, he ruled that it was wantonly negligent and resulted in injury to T.S. (Initial Decision, slip op. at 12-13.) As for J.M.’s certificates, the ALJ found that although DCF substantiated its allegations of abuse, “the physical interaction that took place did not rise to the level of corporal punishment....” (Initial Decision, slip op. at 14.) ALJ Frank stated that other than this isolated incident, J.M. had an unblemished record and that this incident was an aberration and unlikely to recur.

Accordingly, the ALJ concluded that “actions against respondent’s teaching certificates would be too harsh under the circumstances.” (Initial Decision, slip op. at 14.)

In a decision dated October 27, 2008, the Executive Director (ED) of the DCF concurred with ALJ Frank’s conclusion that J.M.’s physical intervention was unnecessary and dangerous and met the statutory definition of physical abuse. (DCF Final Decision, slip op. at 4). The ED found that the force J.M. used in making contact with T.S.’ face was inappropriate. (DCF Final Decision, slip op. at 4). The ED also held that “J.M.’s actions were indicative of poor judgment and placed T.S. at substantial risk of harm.” (DCF Final Decision, slip op. at 4.) Accordingly, the ED affirmed the finding of abuse and ordered that J.M.’s name remain on the Central Registry. (DCF Final Decision, slip op. at 4.)

Thereafter, the matter was transmitted to the Board of Examiners for its decision with regard to J.M.’s teaching certificates. Both J.M. and the Deputy Attorney General (DAG) representing the Board filed exceptions to the ALJ’s Initial Decision.² The DAG argued that J.M.’s inappropriate use of physical force against a student constituted conduct unbecoming a teacher, which warranted the revocation of his certificates. (Exceptions, pp. 3-5.) In his reply Exceptions, J.M. urged the Board to defer to the ALJ’s credibility determinations. (Reply Exceptions, p. 3.) He further argued that absent an arbitrary or capricious ruling, the ALJ’s decision should stand. (Reply Exceptions, p. 3.)

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of January 13, 2009, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of

² Although J.M.’s Reply Exceptions were untimely and the DAG objected to their submission, at its meeting of January 13, 2009, the Board of Examiners voted to accept and consider them.

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 Frank found that J.M.'s physical contact with T.S., although improvident, was not intentional. (Initial Decision, slip op. at 10). Although the Board notes that there need not be a finding of corporal punishment to establish conduct unbecoming a teacher, J.M.'s actions do not rise to that level. His decision to intervene in T.S.' "paper football game" was a mistake, but not one that warrants action against his certificates. The Examiners therefore agree with the ALJ's conclusion that the Order to Show Cause must be dismissed. (Initial Decision, slip op. at 14.)

Accordingly, on January 13, 2009, the Board of Examiners voted to adopt the Initial Decision and dismiss the Order to Show Cause. On this 23rd day of February 2009, the Board of Examiners formally adopted its written decision to adopt the Initial Decision in this matter, and it is therefore ORDERED that the Order to Show Cause issued to J.M. is hereby dismissed effective this day.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing: _____, 200

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

RRH:MZ: