

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
K.W.¹ : ORDER OF DISMISSAL
_____ : DOCKET NO: 0405-289

At its meeting of June 9, 2005, the State Board of Examiners reviewed information received from the Division of Youth and Family Services (DYFS) regarding K.W. DYFS had investigated and substantiated allegations of physical abuse by K.W. DYFS alleged that KW reacted to a six-year-old student's disruptive behavior by binding the child's arms and legs with masking tape and placing the child on the gymnasium floor before releasing him. K.W. currently holds a Teacher of Health and Physical Education certificate, issued in March 1993.

Thereafter, on June 9, 2005, the State Board of Examiners issued K.W. an Order to Show Cause as to why his certificate should not be suspended or revoked. The Order was predicated on the behavior as alleged in the DYFS report.

The Board sent K.W. the Order to Show Cause by regular and certified mail on July 27, 2005. The Order provided that K.W.'s Answer was due within 30 days. K.W. filed an Answer on August 24, 2005. In his Answer K.W. admitted that he had received a letter from DYFS substantiating its allegations of physical abuse. (Answer, ¶ 4). K.W. indicated that he had appealed from DYFS' decision and had not yet received a response to his appeal request. (Answer, ¶ 4). He also denied the characterization of the incident in the Order to Show Cause. (Answer, ¶ 4). K.W. also claimed that three witnesses to the incident were never interviewed by DYFS and that they would verify that K.W. was joking with the child in an effort to calm him down. (Answer, ¶ 4). K.W. asserted that

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

he had loosely put tape around the child's ankles and the tape fell off while K.W. carried the child to the stage area of the gymnasium. (Answer, ¶ 4). When the child was put down, he ran back to his spot in the class and was laughing with the other students. (Answer, ¶ 4). K.W. denied that he bound the child's arms. (Answer, ¶ 4). Notwithstanding K.W.'s claims, the Examiners found probable cause to consider the suspension or revocation of his certificates.

The Examiners transmitted the case to the Office of Administrative Law (OAL). Once the case was at OAL, it was consolidated with K.W.'s appeal of DYFS' decision. Subsequent to the consolidation but prior to the hearing, DYFS amended its findings in the case to "not substantiated." As a result, any issue involving DYFS was moot and K.W. withdrew his appeal against that agency. Administrative Law Judge (ALJ) Margaret Monaco heard testimony on the Examiners' case on August 9 and 13, 2007. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on June 11, 2008. *In the Matter of the Certificate of K.W.*, Dkt No. EDE 01860-06 (Initial Decision, June 11, 2008). The ALJ recommended that the Order be set aside and no action be taken against K.W.'s certificate. (Initial Decision, slip op. at 29.) The ALJ's decision was based on the fact that K.W.'s conduct, "while lacking in good judgment, does not rise to the level warranting action against his teaching certificate." (Initial Decision, slip op. at 27.)

In her decision, ALJ Monaco considered all the testimony of the various witnesses. (Initial Decision, slip op. at 6-16). The ALJ found that the record established at the hearing did not support the allegations in the Order to Show Cause that K.W. had bound the student's legs and arms with masking tape. (Initial Decision, slip op. at 26).

Rather, the ALJ held that the “credible, competent evidence establishes that respondent placed a piece of physical education tape, which undisputably (*sic*) easily rips, loosely around John’s² ankles and a piece across his chest. ...And, respondent provided a credible and persuasive explanation for his actions, which were not taken as a reaction to John’s disruptive behavior in order to punish, debase or humiliate John. (Initial Decision, slip op. at 26.) The ALJ further found that other than the brief incident at issue in this case, K.W. had an “otherwise unblemished and successful career.” (Initial Decision, slip op. at 26.) ALJ Monaco also concluded that K.W. was a “sincere and credible witness,” who exhibited a genuine concern for John’s well being.” (Initial Decision, slip op. at 26.) Thus, while the ALJ did not condone K.W.’s actions nor excuse his lapse in judgment, she held that the totality of the circumstances in the case “should not preclude respondent from teaching in this state.” (Initial Decision, slip op. at 27-29). Accordingly, the ALJ ordered that no action be taken against K.W.’s instructional certificate. (Initial Decision, slip op. at 29-30).

The Deputy Attorney General (DAG) representing the Board of Examiners filed Exceptions to the Initial Decision and K.W. filed Reply Exceptions. In her Exceptions, the DAG argued that the ALJ erred in determining that K.W.’s behavior was not egregious. (Exceptions, p. 2.) The DAG claimed that a penalty was warranted because K.W.’s actions took place in front of a class of impressionable children. (Exceptions, pp. 4-5.) Accordingly, the DAG argued that the Board of Examiners should reject the Initial Decision and act against K.W.’s certificate. (Exceptions, p. 6.) In his reply exceptions K.W. claimed that the ALJ found the testimony in support of K.W. to be consistent and credible. (Reply Exceptions, p. 4.) He further argued that many of the witnesses to the

² “John” is a pseudonym used to protect the identity of the child in this case.

incident supported his testimony and that John's statements to the contrary were never verified by independent, reliable evidence. (Reply Exceptions, p.4.) Finally, K.W. argued that the testimony showed that the other students were laughing along and that no proof was offered showing that any student was adversely affected by his actions. (Reply Exceptions, pp. 4-5.)

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of July 17, 2008, the State Board of Examiners reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of all the submissions, 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 Monaco found that K.W. was a credible witness and that he was motivated by genuine concern for John. (Initial Decision, slip op. at 27-29). The ALJ also contrasted K.W.'s lapse in judgment, which lasted approximately minutes, from his otherwise positive performance over years of teaching. (Initial Decision, slip op. at 26). The Board agrees with ALJ Monaco that although K.W.'s judgment was faulty here, it was a transitory incident with no adverse affects on either John or the other students. When viewed in the context of K.W.'s motivations and his otherwise unblemished teaching career, the Examiners agree with the ALJ's conclusion that the severe penalty of revocation or suspension is not warranted here. (Initial Decision, slip op. at 29).

Accordingly, on July 17, 2008, the Board of Examiners voted to adopt the Initial Decision and dismiss the Order to Show Cause. On this 11th day of September 2008, 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 K.W. is hereby dismissed effective this day.*

Robert R. Higgins, Secretary
State Board of Examiners

*Decision ratified on January 13, 2009

Date of Mailing:

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

RRH:MZ:rg