

June 22, 2009

Andrew Dwyer, Esq.
The Dwyer Law Firm, L.L.C.
17 Academy Street, Suite 1010
Newark, NJ 07102

Re: In the Matter of the Certificates of Ruth Megargee
Docket No. 0304-277

Dear Mr. Dwyer:

As you are aware, on February 23, 2009, the State Board of Examiners voted to suspend the certificates of your client, Ruth Megargee, for one year due to unbecoming conduct. Megargee had lost her tenure with the Department of Human Services (DHS) for failing to perform her job duties and return to work after DHS had provided a reasonable accommodation for her disability. The Board of Examiners issued an Order to Show Cause to Megargee as to why her certificates should not be revoked or suspended based on the conduct underlying the tenure charges. After a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) recommended that Megargee's certificates be suspended for one year. The Board of Examiners adopted the recommendation and suspended Megargee's certificates for one year, effective February 23, 2009. Megargee appealed the Board's decision to the Commissioner of Education and has now requested a stay of the decision pending appeal.

At its meeting of May 11, 2009, the Board of Examiners reviewed your motion for a stay, pursuant to *N.J.A.C. 6A:9-17.17*. After careful review of the matter, for the reasons that follow, on June 22, 2009, the Board of Examiners voted to deny the motion for a stay of its decision to suspend Megargee's certificates for one year.

In determining whether to grant your client's motion for a stay, the State Board of Examiners relied on the standards established in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982), which are incorporated in *N.J.A.C. 6A:9-17.21(b)*:

1. The moving party will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the moving party's claim is settled;
3. The moving party has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the moving party will suffer greater harm than the other party if the requested relief is not granted.

In applying the *Crowe v. DeGioia* test to this case, the State Board of Examiners finds that a stay of the revocation order is not warranted. Megargee would not suffer irreparable harm if her certificates are suspended pending the resolution of her appeal because she can seek other employment and even employment in a parochial or private school which does not require a New Jersey teaching certificate. In fact, Megargee has previously worked as a teacher of disabled students for a private entity, Children's Hospital of Philadelphia. Moreover, Megargee's ability to challenge the appropriateness of the suspension is not impacted by the absence of a stay.

Additionally, Megargee does not have a settled legal right to retain her certificates. She does not have an absolute right to possess a license; she merely has the right to a hearing before her licenses are revoked. That hearing has already been conducted and Megargee was afforded all of the procedural rights to which she was entitled in that proceeding.

Furthermore, the likelihood that Megargee will prevail on the merits of her underlying claim is doubtful, at best. The Commissioner has already decided that Megargee's conduct warranted her removal from her tenured position. Although this case involves the impact of that conduct on her teaching certificates, absent arbitrary action by the State Board of Examiners, the suspension decision is likely to be upheld. Additionally, despite Megargee's claims to the contrary, her case is distinguishable from *In re the Suspension of the Teaching Certificate of Labib*, Agency Dkt. No. 49-00 (State Bd., January 3, 2001.) In *Labib*, a special education teacher lost her tenured position due to excessive absenteeism over an eight-year period. The circumstances surrounding her absences were never litigated as the parties stipulated to the "fact of her absences." *Id.* at 1. After *Labib*'s tenure hearing the Administrative Law Judge issued her decision based solely on the stipulations. *Id.* at 2. After the matter was referred to the Board of Examiners, which imposed a two-year suspension on *Labib*'s certificate, she appealed to the State Board of Education, which reversed the decision. The State Board held that *Labib* had presented evidence in her certification proceeding that had not been presented in the tenure matter establishing that her injuries resulted from three separate incidents of student assault and were incurred through no fault of her own. *Id.* at 4-5. In this case, unlike *Labib*, Megargee's tenure hearing did focus on the circumstances surrounding her absences. Furthermore, the suspension of Megargee's certificates is based on behavior she could cure, *i.e.*, her recalcitrance in accepting the reasonable accommodation her employer offered. Thus, *Labib* is not controlling here and Megargee is unlikely to prevail on her claim.

Finally, Megargee has not demonstrated that she will suffer greater harm than the Board of Examiners if her relief is not granted. Megargee has engaged in conduct that was disruptive of the educational process and therefore, harmful to students. The Board is mindful of its responsibility to safeguard the integrity of the education of New Jersey's schoolchildren. If the Board were to stay its suspension decision now, it would be permitting a person whom it knows engaged in conduct unbecoming a certificate holder,

to be eligible to hold a position in a public school. Clearly, when the benefits and harms are balanced, Megargee cannot prevail on her application for a stay.

Accordingly, because the application for a stay of the Board of Examiners' suspension decision does not meet the standards established in *Crowe v. DeGioia*, the State Board of Examiners voted to deny Megargee's request. Accordingly, for all of the above-mentioned reasons, at its meeting of June 22, 2009, the Board of Examiners voted to deny Megargee's motion for a stay of its decision suspending her certificates for one year beginning on February 23, 2009.

Sincerely,

Robert R. Higgins, Secretary
State Board of Examiners

RRH/MZ/megargee-deney stay

By Certified Mail

Date of mailing:

c: DAG Cynthia Rimol

This matter may be appealed to the Commissioner of Education pursuant to *N.J.A.C. 6A:3-1 et seq.*