

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
R.A.<sup>1</sup> : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0910-228

At its meeting of July 22, 2010, the State Board of Examiners (Board) reviewed a decision forwarded by the Commissioner of Education that had dismissed R.A. from his tenured position with the State-Operated School District of the City of Newark (Newark) for charges of unbecoming conduct. *Department of Children and Families v. R.A., and In the Matter of the Tenure Hearing of R.A.*, Docket Nos. AHU 08-0479 and 248-8/08 (Consolidated) (Commissioner's Decision, August 13, 2009). R.A. currently holds a Teacher of English Certificate of Eligibility, issued in July 1997, a Teacher of English certificate, issued in January 1999, a Supervisor certificate, issued in September 2003, a Principal Certificate of Eligibility, issued in March 2004 and a School Administrator Certificate of Eligibility, issued in November 2005.

This case originated on August 15, 2008, when Newark certified tenure charges against R.A. The district charged him with corporal punishment and unbecoming conduct. Newark alleged that R.A. had struck one student, D.M., with a yardstick resulting in bruises and welts. Newark also alleged that R.A. had slapped a student, H.G., in the face, had engaged in an exchange of punches with another student, L.T., and had slapped student L.B. in the face. On August 25, 2008, the Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). The Department of Children and Families, Institutional Abuse Investigation Unit (IAIU), investigated the corporal punishment allegations involving R.A.'s behavior with D.M. IAIU substantiated the allegations of child abuse against R.A. R.A.

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<sup>1</sup> As the Administrative Law Judge sealed the record in this matter, the respondent will be referred to by initials in this decision.

appealed the finding of the IAIU and the matter was transmitted to OAL for a hearing on September 5, 2008.

On September 17, 2008 Administrative Law Judge (ALJ) Imre Karaszegi, Jr. consolidated the tenure case with R.A.'s appeal of the IAIU findings and determined that DCF/IAIU had predominant interest in the matter. ALJ Karaszegi heard testimony on several days in October, November and December 2008 and on January 6, 2009. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on April 6, 2009.

In that decision, ALJ Karaszegi concluded that R.A. did not commit corporal punishment against D.M. Rather, the ALJ found that D.M.'s testimony regarding the incident was not credible. (Initial Decision, slip op. at 39). ALJ did find that R.A. had poked D.M. playfully with the stick in the upper chest, upper torso and side area. ALJ Karaszegi concluded that "DCF has not met its burden of proof by a preponderance of the evidence that R.A. is guilty of physical abuse by means of the excessive use of corporal punishment on D.M. on December 4, 2007, and that R.A. should be placed on the Central Registry." (Initial Decision, slip op. at 10). The ALJ therefore ordered R.A.'s name removed from the Central Registry. (Initial Decision, slip op. at 12).<sup>2</sup>

As to the tenure charges, the ALJ found that R.A. had slapped H.G. with an open hand on H.G.'s left cheek, which resulted in some pain, but no injury. (Initial Decision, slip op. at 43). (Initial Decision, slip op. at 11). ALJ Karaszegi determined that Newark "has proven unbecoming conduct and improper use of corporal punishment involving H.G." (Initial Decision, slip op. at 11). However, in the incident involving D.M., the ALJ concluded that

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<sup>2</sup> The IAIU portion of the decision was rejected by the Director of DCF who found that the facts established that R.A.'s conduct amounted to abuse and neglect and warranted leaving R.A.'s name on its Child Abuse Central Registry. Those aspects of the Initial Decision are not at issue here.

R.A.'s poking of D.M. was not corporal punishment although it did constitute unprofessional conduct. (Initial Decision, slip op. at 12). Finally, the ALJ concluded that the district had not met its burden of proof with regard to the charges involving L.B. and L.T. (Initial Decision, slip op. at 12).

After considering the appropriate penalty, ALJ Karaszegi concluded that "the FACTS in this case warrant pay reduction, not the loss of tenure." (Initial Decision, slip op. at 12). Consequently, the ALJ ordered that R.A. "shall forfeit all salary and benefits that otherwise would have accrued during the first 120 days of his suspension. I further ORDER that R.A. shall lose any salary increment that he would have been entitled to in the 2008-09 school year." (Initial Decision, slip op. at 12).

In a decision dated August 13, 2009, the Commissioner of Education affirmed the ALJ's Initial Decision as to the findings regarding the incident involving H.G. and the findings of fact regarding D.M. as determined by the Director of DCF. (Commissioner's Decision, slip op. at 7). The Commissioner also agreed with the ALJ that Newark had failed to meet its burden of proof with regard to the charges involving L.T. and L.B. and those charges were therefore dismissed. (Commissioner's Decision, slip op. at 7). The Commissioner disagreed, however, with the penalty the ALJ imposed and found that R.A.'s two separate incidents of unbecoming conduct involving corporal punishment warranted punishment more severe than a monetary penalty. (Commissioner's Decision, slip op. at 7-9). The Commissioner concluded that "the charge proven herein – physical abuse against students whom [R.A.] is charged as an educator with protecting – is professionally unacceptable conduct which cannot be tolerated in a school setting." (Commissioner's Decision, slip op. at 9). Accordingly, the Commissioner ordered R.A.'s removal from his tenured employment with the Newark Board of Education and

transmitted the matter to the Board for appropriate action regarding R.A.'s certificates. (Commissioner's Decision, slip op. at 10).

Thereafter, on September 16, 2010, the Board issued R.A. an Order to Show Cause as to why his certificates should not be revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent R.A. the Order to Show Cause by regular and certified mail on September 23, 2010. The Order provided that R.A.'s Answer was due within 30 days. R.A. filed an Answer on October 22, 2010. In his Answer, R.A. admitted that the district had brought tenure charges against him but denied that the charges had been "proven" or that the charges warranted the revocation of his certificates. (Answer, ¶¶ 5, 10). He also requested that he be allowed to retain his certificates to "continue his life's calling, educating the children of Newark." (Answer, ¶ 11). In the remainder of his Answer, R.A. argued that Newark violated the terms of the statute for bringing a tenure case based upon an unfounded DCF investigation. He also added that the case was on appeal to the Appellate Division and therefore the adjudication of his certifications was not ripe.<sup>3</sup> (Answer, Affirmative Defenses, ¶¶ 1-2).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on November 3, 2010, the Board sent R.A. a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, R.A. was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his

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<sup>3</sup> On May 9, 2011, the Appellate Division affirmed the Commissioner's decision as to R.A.'s tenure. *DCF v. R.A. and In the Matter of the Tenure Hearing of R.A.*, Dkt. No. A-0097-09T1 (App. Div. May 9, 2011) (Unpublished Opinion).

defense, the Board would determine if R.A.'s offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. R.A. was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. On December 3, 2010, R.A. submitted a brief in response to the Hearing Notice. He also asked for the opportunity to appear before the Board and offer testimony on the sanction issue. In his response, he argued that the Commissioner erred in relying on the incident involving H.G. as a basis for revoking his tenure since the matter never was investigated independently by Newark after having been "unfounded" after the IAIU's investigation. (Hearing Response, pp. 11-15). R.A. also alleged that DCF's investigator did not follow proper investigative techniques in determining that R.A. had physically abused D.M. (Hearing Response, pp. 15-20). Finally, in the remainder of his response, R.A. indicated that D.M. had given inconsistent testimony regarding a possible motive for his allegations against R.A. and urged the Board to take the ALJ's credibility findings with regard to D.M. under consideration in rendering its decision regarding R.A.'s certificates. (Hearing Response, pp. 21-24).

In his testimony before the Board on January 20, 2011, R.A.'s attorney stated that two judges, the ALJ and a Municipal Court judge, both found that D.M.'s testimony against R.A. was not credible. He also reiterated that since the findings regarding H.G. were not substantiated, they could not form the basis for a tenure charge against R.A. without an independent investigation by Newark. R.A.'s attorney urged the Board to adopt the credibility findings of the ALJ, who found that the student witnesses against his client were not credible. He noted that R.A. had worked with students in Newark since 1995 and was not a threat to them.

The threshold issue before the Board in this matter, therefore, is whether R.A.'s conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its

meeting of June 16, 2011, the Board considered the allegations in the Order to Show Cause as well as R.A.'s Answer, Hearing Response and testimony. The Board determined that no material facts related to R.A.'s offense were in dispute since he merely attempted to relitigate the facts that had previously been established by the Commissioner and affirmed by the Appellate Division. Moreover, he did not deny that he had lost his tenured position as a result of the tenure proceedings brought against him. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The Board must now determine whether R.A.'s conduct as set forth in the Order to Show Cause, represents just cause to act against his certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

The Board 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*. "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 R.A.'s conduct with regard to hitting D.M. with a yardstick and slapping H.G. in the face amply demonstrates his inability to be a role model for students. His inappropriate behavior speaks volumes about his unfitness to be a teacher. The Board is bound, as was the Commissioner, with the Executive Director's findings as to R.A.'s conduct with D.M. However, either incident, standing alone, would provide the Board with just cause to revoke R.A.'s certificates. The Board therefore concludes that the only appropriate response to R.A.'s breach is the revocation of his teaching certificates.

Accordingly, on June 16, 2011, the Board of Examiners voted to revoke R.A.'s Teacher of English, Principal and Supervisor Certificates of Eligibility and his Teacher of English and Supervisor certificates. On this 28th day of July 2011 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of R.A.'s certificates be effective immediately. It is further ORDERED that R.A. return his certificates to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

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Robert R. Higgins, Secretary  
State Board of Examiners

Date of Mailing:

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-38.4.