

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
MICHAEL DOUGHERTY : ORDER OF REVOCATION
_____ : DOCKET NO: 1011-155

At its meeting of January 20, 2011, the State Board of Examiners (Board) reviewed a decision forwarded by the Commissioner of Education that had dismissed Michael Dougherty from his tenured position with the School District of the City of Trenton (Trenton) for charges of unbecoming conduct. *Department of Children and Families v. M.D., and In the Matter of the Tenure Hearing of Michael Dougherty*, Docket Nos. AHU 08-0990 and 43-3/09 (Consolidated) (Commissioner’s Decision, June 17, 2010). Dougherty currently holds a Teacher of Social Studies certificate, issued in September 1967.

This case originated when the Department of Children and Families (DCF) investigated allegations that Dougherty placed a seventh grade student, J.W., at substantial risk of harm by directing and allowing J.W. to retrieve a book from a slanted roof approximately 20 feet over paved ground. The Institutional Abuse Investigation Unit (IAIU) substantiated the allegations of neglect against Dougherty. Dougherty appealed the findings of the IAIU and the matter was transmitted to the Office of Administrative Law (OAL) on April 3, 2009.

On March 3, 2009, Trenton certified tenure charges against Dougherty and the case was transmitted to the OAL on March 18, 2009. In addition to the incident with J.W., Trenton’s tenure charges alleged that Dougherty had violated school policy by removing a student’s “hoodie” in the hallway, showing an R-rated movie to his class, allowing students to play cards in class during instructional time, failing to have his roll book with him during a fire drill, failing

to pick up his students from the cafeteria in a timely manner, permitting more than one student out of his class at a time, failing to meet requirements of the Learning for Learning checklist and leaning on a student's desk, causing it to overturn and send the student to the floor. The district also alleged that Dougherty's work attendance during the 2007-08 school year did not meet district guidelines and that his classroom was in violation of various fire codes.

On April 9, 2009, Administrative Law Judge (ALJ) Ana Viscomi consolidated the tenure case with Dougherty's appeal of the IAIU findings and determined that DCF/IAIU had predominant interest in the matter. ALJ Viscomi heard testimony on several days in June, July, August, September and October 2009. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on March 22, 2010.

In that decision, ALJ Viscomi found that Dougherty was overwhelmed by the demands of his classroom and that upon learning that two books, which looked new to him, were on the roof next to his classroom, he asked J.W. to retrieve them. (Initial Decision, slip op. at 16). The roof was approximately 20 feet above the ground and was slanted. *Ibid.* J.W. retrieved one book which was close to the window, but declined to retrieve a second book which was closer to the edge of the slanted roof. *Ibid.* The ALJ found that, even if Dougherty's claim that J.W. volunteered to retrieve the book was true, Dougherty's duty was to ensure the safety of his students. *Ibid.* ALJ Viscomi therefore found that DCF "appropriately substantiated neglect" based upon the events that unfolded. *Ibid.*

As for the remaining tenure charges, ALJ Viscomi found that Dougherty had engaged in conduct unbecoming a teacher:

Asking students to retrieve books from the roof, tilting a desk because a student refused to identify himself and remove a "hoodie," purposeful failure to acclimate to hand book

requirements of taking his roll book with him to fire drills and failure to clear his classroom of obstructions determined to be fire code violations are all the actions of a teacher whose unbecoming conduct warrants his termination from employment. Purposefully ignoring a handbook prohibition of showing an “R”-rated movie to 7th graders under the guise of “academic freedom” constitutes conduct unbecoming. Inability to control his classroom and allowing students to engage in card playing without even noticing it is not an example of effective teaching techniques and constitutes conduct unbecoming.

Ibid. The ALJ therefore concluded that “the conglomeration of all of these unfortunate instances over less than two years’ period of time amply demonstrate that the respondent was properly removed from his position as a teacher.” *Ibid.* Based upon her findings, ALJ Viscomi ordered that Dougherty’s name should remain on the Central Registry and affirmed the removal of his tenure. *Id.* at 19-20. ¹

In a decision dated June 17, 2010, the Commissioner of Education affirmed the ALJ’s Initial Decision as to the findings regarding the many incidents alleged in the tenure charges and the findings of fact regarding J.W. as determined by the Director of DCF. (Commissioner’s Decision, slip op. at 6-10). The Commissioner adopted the portion of the Initial Decision dealing with the tenure charges and finding Dougherty guilty of unbecoming conduct as his final decision in the matter. (Commissioner’s Decision, slip op. at 10). Accordingly, the Commissioner ordered Dougherty’s removal from his tenured employment with the Trenton Board of Education and transmitted the matter to the Board for appropriate action regarding Dougherty’s certificate. (Commissioner’s Decision, slip op. at 10).

¹ The IAIU portion of the decision was adopted with modification by the Acting Commissioner of DCF. Those aspects of the Initial Decision are not at issue here.

Thereafter, on March 31, 2011, the Board issued Dougherty an Order to Show Cause as to why his certificate 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 Dougherty the Order to Show Cause by regular and certified mail on April 4, 2011. The Order provided that Dougherty's Answer was due within 30 days. Dougherty filed an Answer on May 26, 2011. In his Answer, Dougherty admitted that the district had brought tenure charges against him but added that he had always refuted the findings. (Answer, ¶ 3). He also admitted that the tenure charges in the Order to Show Cause were accurately stated but that the "allegations themselves are untrue, inaccurate and overstated." (Answer, ¶ 6). In the remainder of his Answer, Dougherty reiterated the claims he made at the tenure hearing that his principal, Joseph Marazzo, had continually intimidated, harassed and berated him. (Answer, ¶ 6).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on June 1, 2011, the Board sent Dougherty a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Dougherty 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 certificate. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Dougherty's offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Dougherty was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. On July 6, 2011, Dougherty submitted a brief in response to the Hearing

Notice. He did not request the opportunity to appear before the Board and offer testimony on the sanction issue. In his response, he argued that most of the tenure charges against him stemmed from an overreaction on the part of his building principal, Mr. Marazzo. (Hearing Response, pp. 4-14). Dougherty also claimed that he made an error in judgment in allowing J.W. to retrieve the book from the roof but insisted that she had only taken a few steps to retrieve the book and was already in the process of doing so before he could stop her. (Hearing Response, pp. 18-22). Dougherty noted that he had taught successfully at Trenton High School before he was transferred and began working in Marazzo's building. (Hearing Response, p. 22). Dougherty claimed that most of the charges against him were benign and "of the type that could probably be brought against any teacher in any district at any time." (Hearing Response, p. 23). He added that the abuse allegation where he supposedly knocked a student out of his desk was unfounded by IAIU. (Hearing Response, p. 23). Finally, while Dougherty admitted a sanction might be warranted in the incident involving J.W., he stated that it should not be punishable by the loss of his teaching certificate. (Hearing Response, p. 23).

The threshold issue before the Board in this matter, therefore, is whether Dougherty's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of September 22, 2011, the Board considered the allegations in the Order to Show Cause as well as Dougherty's Answer and Hearing Response. The Board determined that no material facts related to Dougherty's offense were in dispute since he merely attempted to relitigate the facts that had previously been established by the Commissioner. 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 Dougherty's conduct as set forth in the Order to Show Cause, represents just cause to act against his certificate 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. The Board is bound, as was the Commissioner, with the Executive Director's findings as to Dougherty's conduct with J.W. That incident, standing alone, would provide the Board with just cause to revoke Dougherty's certificate. To put a student at risk, however remote the teacher thinks it may be, is not "an error in judgment" but an abrogation of the teacher's responsibility towards that student. There can be no dispute that Dougherty's conduct, in its totality, amply demonstrates his unfitness to continue to be a teacher. The Board therefore concludes that the only appropriate response to Dougherty's breach is the revocation of his teaching certificate.

Accordingly, on September 22, 2011, the Board of Examiners voted to revoke Michael Dougherty's Teacher of Social Studies certificate. On this 19th day of January 2012 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Dougherty's certificate be effective immediately. It is further ORDERED that Dougherty return his certificate 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.

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.