

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
RALPH SCHIAVO : ORDER OF DISMISSAL
_____ : DOCKET NO: 0304-289

At its meeting of June 10, 2004, the State Board of Examiners voted to issue Ralph Schiavo an Order to Show Cause. The Order was predicated on charges of physical abuse of a student. Schiavo currently holds a Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, issued in July 1996, a Teacher of Health and Physical Education certificate, issued in June 1997 and a Teacher of Driver Education certificate, issued in December 2003.

This case originated when the Division of Youth and Family Services (DYFS) provided information to the Board of Examiners regarding Schiavo. DYFS had investigated allegations of physical abuse against Schiavo. Schiavo had allegedly hit heads with a student when he pulled that student aside to admonish him for calling Schiavo by a nickname. Schiavo had also used profanity when he was talking to the student. The student had called Schiavo by the nickname on repeated occasions and had been told each time not to do so. As a result of this incident the student developed a lump on his forehead. After conducting its investigation, DYFS substantiated the charges of physical abuse against Schiavo. Thereafter, on June 10, 2004, the Board of Examiners issued an Order to Show Cause to Schiavo based upon the substantiated allegations in the DYFS report.

The Board sent the Order to Show cause to Schiavo by regular and certified mail on July 21, 2004. The Order provided that Schiavo's Answer was due within 30 days. Schiavo filed his Answer on July 23, 2004. In the Answer, Schiavo denied that he had any intentional physical contact with the student. (Answer, ¶ 3). He also stated that he had requested a hearing challenging the DYFS allegations. (Answer, ¶ 5). Schiavo also

denied that there was just cause to suspend or revoke his teaching certificates. (Answer, ¶ 6).

The Board of Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) John Schuster, III heard testimony on July 27, 2005. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on December 14, 2005. *In the Matter of the Certificates of Ralph Schiavo*, OAL Dkt. No. EDE 8425-04 (December 14, 2005).

In that decision, after evaluating all of the testimony and the credibility of the witnesses, ALJ Schuster found that Schiavo had an unblemished record before the incident in question. (Initial Decision, slip op. at 7). When a student yelled “Hey Ralphie” to him, Schiavo reacted by putting his hand on the student’s shoulder and telling him that he was not “fucking around” and that the remark was inappropriate. (Initial Decision, slip op. at 7). During the course of this conversation, the student and Schiavo bumped heads unintentionally and the student subsequently developed a lump on his forehead. (Initial Decision, slip op. at 7). ALJ Schuster found that “the contact between Mr. Schiavo’s forehead and the student’s forehead was totally accidental and without any intention to harm the student.” (Initial Decision, slip op. at 7). The ALJ determined that Schiavo did use inappropriate language when addressing the student. (Initial Decision, slip op. at 7). ALJ Schuster also found that Schiavo realized he had used inappropriate language and apologized at the first opportunity. (Initial Decision, slip op. at 7). As a result of the incident, the Audubon Board of Education suspended Schiavo for 10 days without pay, withheld his annual salary increment, placed a letter of reprimand in his file and required him to attend an anger management program, which he did. (Initial Decision, slip op. at 7). Moreover, Schiavo participated in a neuro-psychiatric/psychological evaluation at the request of the Audubon Board of Education.

(Initial Decision, slip op. at 7). The examiner remarked that the incident was accidental and that Schiavo is not a risk to children. (Initial Decision, slip op. at 8).

The ALJ determined that Schiavo did not commit corporal punishment. (Initial Decision, slip op. at 8). The ALJ further concluded that Schiavo was “a well respected and highly qualified teaching professional who on the day in question made a mistake by way of a reflex reaction as opposed to a consciously considered comment.” (Initial Decision, slip op. 8). In considering the penalty ALJ Schuster held that there were no aggravating factors presented. (Initial Decision, slip op. at 9). The ALJ also found that Schiavo’s immediate remorse and unblemished record were mitigating factors. (Initial Decision, slip op. at 9). The ALJ stated that he used a common sense approach in determining the proper sanction: “I do so recognizing respondent recognized it as a mistake, that its likelihood of being repeated is minimal, that it is totally out of character for this otherwise exceptional teacher, and there being no showing the incident had any harmful effect upon any of respondent’s students.” (Initial Decision, slip op. at 9). Accordingly, the ALJ concluded that the penalty the Audubon Board had imposed upon Schiavo was appropriate and no other sanction would serve any purpose. (Initial Decision, slip op. at 10). The ALJ therefore dismissed the Order to Show Cause. (Initial Decision, slip op. at 10).

In response to the Initial Decision, the Deputy Attorney General (DAG) representing the Board of Examiners filed exceptions challenging the ALJ’s dismissal of the Order to Show Cause. The DAG argued that the ALJ erred in concluding that Audubon’s sanctions against Schiavo were sufficient for this matter as well. (Exceptions, p. 2). The DAG noted the distinction between the authority of a local school board in disciplining one of its employees and the authority of the Board of Examiners in exercising its statewide responsibilities. (Exceptions, pp. 2-3) According to the DAG, the Board of Examiners’ action could bar Schiavo from teaching statewide as opposed to

in just one district and therefore the Board of Examiners was not precluded from taking additional action. (Exceptions, p. 4). The DAG further argued that since Schiavo had confronted the student inappropriately, the ALJ erred when he dismissed the Order to Show Cause. (Exceptions, pp. 5-8.)

In reply exceptions, Schiavo argued that the Board of Examiners did not present a preponderance of credible evidence demonstrating that his certificates should be revoked or suspended. (Reply Exceptions, pp. 2-3). Furthermore, he argued that the ALJ found that any physical contact between himself and the student was unintentional. (Reply Exceptions, pp. 3-4). Schiavo also reiterated his immediate remorse regarding the incident and his unblemished record. (Reply Exceptions, pp. 4-6).

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of March 30, 2006, 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. The Board agrees that the ALJ correctly reviewed the evidence and testimony before him.

Furthermore, 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. The ALJ found that the witnesses presented both by the Board of Examiners and Schiavo gave testimony that was “extensively mitigating in nature and indicated that respondent is well respected by his peers, as well as his students, and the incident in question was totally out of character and isolated in nature.” (Initial Decision, slip op. at 9). More importantly, ALJ Schuster determined that Schiavo “was not found to have committed any act of physical abuse upon the student in question as any physical contact between them was either incidental or accidental.” (Initial Decision, slip op. at 8). Clearly, based on the testimony presented, Schiavo’s actions did not rise to the level of conduct unbecoming a teacher, pursuant to *N.J.A.C. 6A:9-17.5*. The Board of Examiners

therefore agrees with the ALJ that Schiavo's behavior does not warrant either the suspension or revocation of his certificates.

The State Board of Examiners 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*. Here, because there has been no finding that Schiavo has engaged in conduct unbecoming a teacher or the presentation of "other just cause," the Board will take no action against his certificates.

Accordingly, pursuant to the Board of Examiners' vote, it is therefore ORDERED that the Order to Show Cause issued to Ralph Schiavo seeking to suspend or revoke his Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing and his Teacher of Health and Physical Education and Teacher of Driver Education certificates be dismissed effective this 4th day of May 2006.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: MAY 10, 2006

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