

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JANNETTE DURAN : ORDER OF SUSPENSION (2)
_____ : DOCKET NO: 0708-268

At its meeting of May 1, 2008, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education dismissing Jannette Duran from her tenured position with the Camden Board of Education for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Jannette Duran*, Docket No. 247-07 (Commissioner's Decision, July 5, 2007). At the time, Duran held a Teacher of Elementary School Certificate of Eligibility, issued in July 2001 and a Teacher of Elementary School certificate, issued in July 2002.

The Camden Board of Education (District) had certified tenure charges against Duran charging Duran, as well as other District employees, with unbecoming conduct, insubordination and neglect of duty. The charges alleged that Duran was involved in a fraudulent attempt to receive payment for attendance at meetings of School Leadership Committees when no such meetings took place. In addition, Duran allegedly attempted to cover up the facts during the District's investigation by filing fabricated documents and providing false information.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Jeff Masin heard testimony on several days in March, April and May 2007. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on May 17, 2007. *In the Matter of the Tenure Hearing of Jannette Duran*, OAL Dkt. No. EDU 6754-06S (Initial Decision, May 17, 2007.)

In that decision ALJ Masin found that Duran served as a member of a School Leadership Council (SLC) for the 2004-2005 and 2005-2006 school years. (Initial Decision, slip op. at 8.) As a member of an SLC, Duran had signed a Statement of Understanding which listed the responsibilities of the SLC, including the selection and implementation of a whole-school reform model. (Initial Decision, slip op. at 10.) Duran was entitled to additional compensation for serving as an SLC member and received extra pay for the 2004-2005 school year. (Initial Decision, slip op. at 8.) No meetings of the SLC were held on any of the District-approved dates during the 2005-2006 school year although payroll reports were submitted seeking compensation for SLC members. (Initial Decision, slip op. at 10-11.) The purported dates of the SLC meetings, as listed on the payroll reports, were all on Saturdays, but the District's investigation showed that no meetings were held at District buildings on those Saturdays. (Initial Decision, slip op. at 11-12.) The District's investigation also revealed that the sign-in sheets for the various meetings had been fabricated. (Initial Decision, slip op. at 11-12.) The District investigation team also met with SLC members to determine, whether meetings were held, when they were held and what time the member attended. (Initial Decision, slip op. at 13.) Duran was out sick when the investigation team held this meeting with SLC members. (Initial Decision, slip op. at 13.) In addition, some of the SLC members gave binders to the investigators which included documentation that was apparently meant to show that the meetings had occurred and that the member was present. (Initial Decision, slip op. at 16.) Duran did not submit a binder. (Initial Decision, slip op. at 16.)

Duran testified at the hearing that she had signed "lots" of sign-in sheets as directed by her principal, Michael Hailey. (Initial Decision, slip op. at 25.) She said that

the sheets were undated, contained many other signatures and that she did not know what they were for. (Initial Decision, slip op. at 25.) Duran also prepared a matrix at Hailey's direction listing meeting dates and times. (Initial Decision, slip op. at 26.) She testified that she copied the information for this matrix from someone else's form and acknowledged that the information on there was a "lie" because she did not attend any of the listed meetings. (Initial Decision, slip op. at 26.)

After considering all the testimony, ALJ Masin found that the issue in the hearing was not whether any of the SLC's work had, in fact, been accomplished. (Initial Decision, slip op. at 27-28.) Rather, the District's focus was on the dishonesty of its employees in propagating and perpetuating the falsehood that meetings had taken place on particular dates and that all of these individuals attended. (Initial Decision, slip op. at 28.) The Judge found that Duran "went along with filling out a complete matrix with information supplied to her, on which she blatantly represented that she had attended each and every meeting for a group she professes she did not even know she was a part of." (Initial Decision, slip op. at 31-32.) He also noted that when Duran testified about signing the matrix, "she acknowledged that she knew she was lying." (Initial Decision, slip op. at 32). Judge Masin concluded that Duran, as well as the other employees, "each failed when they had the chance to be honest." (Initial Decision, slip op. at 33).

Judge Masin concluded that Duran was guilty of unbecoming conduct "for her attempt to fraudulently obtain money from the Board and for unbecoming conduct and neglect of duty in that she knowingly prepared and acquiesced in the submission of the fraudulent matrix that she prepared on April 27th." (Initial Decision, slip op. at 34.) Judge Masin held that the appropriate penalty was Duran's removal from her tenured

position because she “violated the trust of [her] employer and the public and provided such a negative example when instead the situation cried out for [her] to be honest and forthright.” (Initial Decision, slip op. at 36). He did add, however, that he believed Duran could still be a useful and effective teacher in other circumstances. (Initial Decision, slip op. at 36.) Thus, based on his review of the entire record, the ALJ concluded that Duran’s breach was too substantial to allow for her continued employment in the district. (Initial Decision, slip op. at 37). Consequently, the ALJ ordered Duran dismissed from her tenured employment.

In a decision dated July 5, 2007, the Commissioner of Education affirmed the ALJ’s Initial Decision as to the tenure charges against Duran. The Commissioner agreed with the ALJ that the local board had proven its tenure charges of unbecoming conduct against Duran. (Commissioner’s Decision, slip op. at 4). The Commissioner clarified that Duran was guilty of insubordination as well as conduct unbecoming and agreed that removal from her tenured position was the appropriate penalty. (Commissioner’s Decision, slip op. at 5). Accordingly, the Commissioner affirmed Duran’s removal from her tenured employment with the Camden Board of Education and transmitted the matter to the State Board of Examiners pursuant to *N.J.A.C. 6A:9-17.6* for appropriate action regarding Duran’s certificates.

Thereafter, on July 17, 2008, the State Board of Examiners issued Duran an Order to Show Cause as to why her certificates should not be suspended. The Order was predicated on the unbecoming conduct proven in the tenure hearing. After reviewing Duran’s Answer to the Order to Show Cause and her response to the Hearing Notice, the Board of Examiners suspended her Teacher of Elementary School Certificate of

Eligibility and Teacher of Elementary School certificate for a period of two years effective March 31, 2009. In August 2008, during the pendency of the proceedings before the Board, Duran was issued a Teacher of English As a Second Language Certificate of Eligibility, which was not included in the earlier proceedings or the Board's suspension order of March 31, 2009. As a result of a computer glitch, the credentials examiner who issued Duran's Teacher of English As a Second Language Certificate of Eligibility was unaware of the pending proceedings against Duran's certificates.

At its meeting of October 22, 2009, the Board voted to issue Duran an Order to Show Cause as to why her Teacher of English As a Second Language Certificate of Eligibility should not be suspended until March 31, 2011. The Board sent Duran the Order to Show Cause by regular and certified mail on October 26, 2009. The Order provided that Duran's Answer was due within 30 days. Duran filed an Answer on January 12, 2010. In her Answer, Duran stated that the Order to Show Cause should be dismissed and alleged that the hearing process was inadequate due process. (Answer, p. 2.) In the remainder of her Answer, Duran added that she had been punished by the suspension of her other two certificates and that "no new information, allegations or unbecoming conduct ...has arisen or been alleged outside of the tenure charges and certainly none has been claimed since the decision in the tenure case and, the Order to Show Cause." (Answer, p. 2.) Duran claimed that she was being punished twice for the same offense and, although this was not double jeopardy in the strict legal sense, because a property right was at stake, there was no "legal foundation upon which to process this second Order to Show Cause." (Answer, p. 2.)

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on January 21, 2010, the Board sent Duran a hearing notice by regular and certified mail. The notice explained that it appeared no material facts were in dispute regarding the conduct underlying the tenure charges and offered her 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. Duran was also given the opportunity to appear to offer testimony on the issue of mitigation and the appropriate sanction. It also explained that, upon review of the charges against her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her offense warranted action against her certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Duran responded on February 22, 2010.

In that response, Duran recounted the procedural history of her case from the inception of the tenure proceedings up to the point of the current Order to Show Cause proceeding against her Teacher of English As a Second Language Certificate of Eligibility. (Hearing Response, pp. 1-2.) She argued that her ESL certificate was validly issued and that “no act has occurred since its issuance that can form the basis for any action to be taken against it.” (Hearing Response, p. 2.) She noted that for the Board “to now come forward and, in essence, change the rules of the game by going back and extending punishment is inappropriate and unacceptable.” (Hearing Response, p. 2.) Thus, Duran stated that she had been punished by the Board “through the Board’s original determination” and claimed that she “should not be subject to additional punishment based upon no additional charges or offenses.” (Hearing Response, p. 3.)

The threshold issue before the State Board of Examiners in this matter is whether Duran's conduct as proven in the tenure matter constitutes conduct unbecoming a certificate holder. At its meeting of March 25, 2010, the State Board of Examiners reviewed the charges and papers Duran filed in response to the Order to Show Cause. After reviewing her response, the Board of Examiners determined that no material facts related to Duran's offense were in dispute since she admitted that the conduct underlying the tenure charges had been proven. Duran cannot deny the findings underlying the charges in the Order to Show Cause. Thus, the Board of Examiners 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 State Board of Examiners must now determine whether Duran's offense as set forth in the Order to Show Cause, represents just cause to act against her English As a Second Language Certificate of Eligibility pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that her acts of fabricating attendance materials and seeking payment for attending SLC meetings that did not occur constitute conduct unbecoming a certificate holder.

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*. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). "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 Duran’s behavior calls into question her ethics and negates her claim as a role model for veracity. Her inability to come forward with the truth until her tenure hearing also speaks volumes about her lack of judgment. Moreover, the fact that, unlike her other colleagues, she did not submit a binder compounding her lies, is not persuasive in meting out a lesser penalty, since the issue here is one of veracity and she failed to be truthful in the first instance.

Moreover, Duran’s argument that the Board cannot act against her after-acquired certificate because she was already punished in the prior suspension proceeding is without merit. Pursuant to *N.J.A.C.* 6A:9-17.7(i), “the Office may refuse to issue a new certificate to a certificate holder who is otherwise eligible for the additional certificate if the certificate holder is the subject of a pending action to revoke or suspend his or her certificate(s) pursuant to *N.J.A.C.* 6A:9-17.7.” Clearly this provision is applicable to Duran’s situation and but for a technical malfunction would have been imposed in her case.

However, the Board accepts ALJ Masin’s finding that she is not irredeemable. Accordingly, consistent with the penalties it imposed in the related matters, the Board will impose a suspension on Duran’s certificates.

Accordingly, on March 25, 2010 the Board of Examiners voted to suspend Jannette Duran’s Teacher of English As a Second Language Certificate of Eligibility until March 31, 2011. On this 29th day of April 2010 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the suspension of Duran’s certificate be effective immediately. It is further ORDERED that Duran return her

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 the provisions of *N.J.S.A. 18A:6-38.4*.

RRH:MZ:th