

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
ERIK SAUNDERS : ORDER OF SUSPENSION
_____ : DOCKET NO: 0708-248

At its meeting of June 5, 2008, the State Board of Examiners reviewed information the Hamilton Township School District had forwarded pursuant to *N.J.A.C. 6A:9-17.4* regarding Erik Saunders. Saunders resigned from his non-tenured position in the district after it was alleged that he had made inappropriate comments to two female students, J.C. and A.G. Allegedly, Saunders also sent inappropriate text messages of a sexual nature to them, called them repeatedly and contacted them through the internet. Saunders currently holds a Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, issued in August 2001, a Teacher of Health and Physical Education certificate, issued in June 2002 and a Teacher of Swimming and Water Safety Instructor certificate, issued in December 2005. At its meeting of July 17, 2008, the Board voted to issue Saunders an Order to Show Cause as to why his certificates should not be revoked.

The Board sent Saunders the Order to Show Cause by regular and certified mail on July 31, 2008. The Order provided that Saunders' Answer was due within 30 days. Saunders filed an Answer on August 11, 2008. In his Answer, Saunders denied the allegations. (Answer, ¶¶ 3, 4.) He also denied that any conduct on his part provided just cause for the revocation of his certificates. (Answer, ¶ 5.)

Thereafter, the Board transmitted the matter to the Office of Administrative Law (OAL) as a contested case. A hearing was conducted before Administrative Law Judge (ALJ) Patricia Kerins on August 10, 2009. After the record closed, ALJ Kerins issued her Initial Decision on December 15, 2009. *In the Matter of the Certificates of Saunders*, Dkt. No. EDE 6659-08

(Initial Decision, December 15, 2009). In that decision, ALJ Kerins concluded that Saunders “sent inappropriate text and phone messages to the two students.” *Id.* at 6. She reviewed the testimony presented by the two students and found them to be credible on the issue of the inappropriate texts that Saunders sent to them, including his commenting on their underwear and their personal grooming habits. *Id.* at 3. However, ALJ Kerins determined that Saunders was credible in his denial of having touched J.C., finding that he did not touch J.C. by lifting her blouse or pulling the waistband of her pants forward. *Id.* at 6.

In considering the appropriate penalty in the case, ALJ Kerins determined that “the Board has shown by a preponderance of the evidence that Saunders engaged in conduct unbecoming a teacher. His pattern of text and phone messages to both young women was inappropriate and a violation of the trust the public places in teachers.” *Id.* at 7. As a result, the ALJ concluded that Saunders’ certificates should be suspended for four months.

The Deputy Attorney General (DAG) representing the Board of Examiners submitted Exceptions and Saunders submitted Reply Exceptions. In her Exceptions, the DAG agreed with the ALJ’s finding that Saunders had engaged in conduct unbecoming a teacher, but argued that the four-month suspension imposed was too lenient. (Exceptions, pp. 1-2.) Instead, the DAG claimed that prior case law warranted revocation in this matter. (Exceptions, pp. 2-3.)

In his reply, Saunders urged the Board to adopt the Initial Decision without modification. (Reply Exceptions, p. 1.) Saunders noted that ALJ Kerins had found that he had sent inappropriate text and phone messages to two female students “who were both over the age of eighteen at all relevant times.” (Reply Exceptions, p. 2.) Saunders contrasted his case with those cited by the DAG in which all of “the victims were minor, female children.” (Reply Exceptions, p. 2.) Saunders added that even “New Jersey Law makes strong distinctions in the degree of

criminal liability, and corresponding penalty, which may be imposed based upon the age of an alleged victim.” (Reply Exceptions, pp. 3.) Saunders further argued that, although he admitted to sending text messages to the students, he never admitted to sending inappropriate texts. Therefore, since no actual phone or text records were admitted into evidence, but only the report of the affirmative action office, which had copied the text messages from the cell phone, a four-month suspension was appropriate, given that texting students “may not have been the best practice....” (Reply Exceptions, pp. 6-7.) Finally, Saunders agreed that “under these circumstances, the Court’s imposition of a four-month suspension of his Teaching Certificates constitutes a measured, but stern decision, which should not be disturbed.” (Reply Exceptions, p. 7.)

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of April 29, 2010, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision, Exceptions and Reply Exceptions and the issues raised therein, the Board voted to modify the Initial Decision as to penalty.

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. As noted above, ALJ Kerins found that Saunders sent inappropriate text messages to two female students who were over the age of eighteen. (Initial Decision, slip op. at 2, 6.) Although ALJ Kerins concluded that a four-month suspension of Saunders’ teaching certificates was an appropriate penalty, the Board of Examiners disagrees. Saunders has clearly engaged in conduct that damages his status as a role model for students. Although the Board concludes that revocation would be too harsh in this instance, it similarly concludes that a suspension of merely four months undermines the necessity

of condemning his behavior in the strongest possible way. The Examiners therefore conclude that a more appropriate response to Saunders' breach is a two-year suspension of his teaching certificates.

Accordingly, on April 29, 2010, the Board of Examiners voted to modify the Initial Decision and suspend Saunders's teaching certificates for a period of two years. On this 10th day of June 2010, the Board of Examiners formally adopted its written decision to modify the Initial Decision in this matter, and it is therefore ORDERED that Erik Saunders's Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing and his Teacher of Health and Physical Education and Teacher of Swimming and Water Safety Instructor certificates be hereby suspended for a period of two years effective immediately. It is further ORDERED that Saunders 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.

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*.