

SBE #0405-103
SB # 47-05

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATES OF : STATE BOARD OF EDUCATION
CARMELLA CONFESSORE BY THE : DECISION ON MOTION
STATE BOARD OF EXAMINERS. :

Action by the State Board of Examiners taken on November 3, 2005

Decision on motion on behalf of the State Board of Education,
November 18, 2005

Remanded by the State Board of Education, January 4, 2006

Decision issued by the State Board of Examiners, January 27, 2006

Decided by the State Board of Education, March 1, 2006

Decided by the State Board of Education, October 4, 2006

For the Respondent-Appellant, Szaferman, Lakind, Blumstein, Blader &
Lehmann, P.C. (Robert E. Lytle, Esq., of Counsel)

For the Petitioner-Respondent, Carolyn Labin, Deputy Attorney General
(Stuart Rabner, Attorney General of New Jersey)

This matter was initiated on April 19, 2005, when the State Board of Examiners issued an Order to Carmella Confessore (hereinafter "appellant" or "Confessore"), the co-owner of the Harrison Learning Center, a preschool at which she also served as a teacher, to show cause why her Elementary School and Preschool through Grade 3 teaching certifications should not be revoked or suspended based on a report issued by the Department of Education's Office of Compliance Investigation. According to the

Show Cause Order, that report “concluded that Confessore’s school was making fraudulent payroll payments to an individual who did not perform any [sic] at the preschool.¹ Judy Treanor, a part-time employee of the school did not have her name on any of the school’s payroll registers. Her salary payments instead went to her son, Brian Treanor.”

In her answer and accompanying certification, the appellant admitted that the salary payments of Judith Treanor had been made to her son Brian during 2003. The appellant explained that Judith Treanor’s husband had died in May 2003 after a lengthy illness and that she had reluctantly agreed to Mrs. Treanor’s request to make her salary payable to her son since she was concerned that her income could have disqualified her from receiving her husband’s social security benefits. The appellant refuted the Board of Examiners’ charge that Brian Treanor was not employed at the school, averring that he was employed to perform maintenance, custodial and computer duties. The appellant added that she “did not personally profit from her conduct and was motivated solely by a compassionate, albeit misguided, attempt to help a friend who was experiencing severe personal and financial difficulties as the result of her husband’s lengthily [sic] illness and subsequent death.” Answer to Show Cause Order, at 3. She averred that both Judith and Brian Treanor “were paid solely for work that they actually performed” at the school. Appellant’s Certification, at 2.

Brian Treanor averred in a certification that he was employed by the preschool during the 2003-04 school year performing maintenance and custodial duties after

¹ We note that the Office of Compliance Investigation did not conclude that the school was making fraudulent payroll payments. Rather, it found “a potential violation of federal and state tax regulations.” Report, at 2.

school hours and that he also assisted in setting up a computer system for the school. He stated that his paycheck included his salary in addition to payment for work performed at the school by his mother and that all state and federal taxes were deducted from each paycheck.

By letter dated November 4, 2005 from the Acting Secretary of the Board of Examiners, the appellant was notified that the Board of Examiners had voted at its meeting on November 3, 2005 to suspend the appellant's teaching certifications for two years, effective immediately. She was advised that a written decision setting forth the reasons for the Board of Examiners' action would be forwarded to her shortly.

The appellant filed an appeal to the State Board of Education, along with an emergent application seeking a stay of the Board of Examiners' action.

On November 18, 2005, the President of the State Board of Education and the Chairperson of the Legal Committee, acting on behalf of the State Board pursuant to their authority under N.J.A.C. 6A:4-3.3, granted a stay of the Board of Examiners' action of November 3, 2005 on an emergent basis pending consideration of the appellant's motion by the State Board of Education.

In a decision issued on January 4, 2006, we stayed the Board of Examiners' action and remanded the matter to the Board of Examiners with the direction that it issue and certify to us a written decision that had been properly adopted by a formal vote at its next public meeting. On February 1, 2006, the Acting Secretary of the Board of Examiners transmitted to us a written decision adopted by the Board of Examiners on January 19, 2006 and mailed on January 27. In its decision, the Board of Examiners concluded that the appellant's behavior violated the standard of conduct expected of a

certificate holder, observing that “[h]owever well-intentioned Confessore may have been there can be no dispute that her actions were dishonest and misleading even if they were designed to help a friend.” State Board of Examiners’ Decision, slip op. at 4. Finding that the appellant’s “otherwise unblemished career does weigh heavily in her favor,” id. at 5, the Board of Examiners suspended the appellant’s Elementary School and Preschool Through Grade 3 teaching certifications for two years beginning on January 19, 2006.

The parties thereafter inquired as to whether the stay imposed by the State Board on January 4 was to remain in effect until a decision was made on the underlying appeal. In addition, appellant’s counsel informed us that the decisions rendered by the Board of Examiners over the past few years were not posted on the Department of Education’s website and were not otherwise available. He contended that the failure to provide him with an opportunity to review those decisions constituted a denial of the appellant’s right to due process.

In a decision issued on March 1, 2006, the State Board of Education clarified that the stay it had issued on January 4 was not conditional and did not expire upon the adoption of a written decision by the Board of Examiners. Rather, the stay remained in effect unless vacated by formal action by the State Board of Education. Since decisions rendered in recent years by the Board of Examiners were not generally available, the State Board of Education directed the Board of Examiners to make its decisions available to the appellant’s counsel and to the State Board of Education by April 5, 2006.

On April 20, 2006, the briefing schedule was re-established after the decisions of the Board of Examiners were posted on the Department of Education's website.

After a thorough review of the record and the arguments of counsel, the State Board of Education determined in its decision of October 4, 2006 that the appellant's behavior as established in the record violated the standard of conduct expected of a certificate holder. However, review of the record and consideration of recent decisions rendered by the Board of Examiners,² convinced the State Board that a two-year suspension would be unduly harsh. Rather, given the circumstances, the State Board concluded that a one-year suspension of the appellant's Elementary School and Preschool through Grade 3 certifications was the appropriate penalty. Accordingly, the State Board modified the penalty imposed by the Board of Examiners and directed that the appellant's Elementary School and Preschool through Grade 3 certifications be suspended for one year, effective immediately.

By a motion filed on October 17, 2006, counsel for appellant sought clarification as to whether, for purposes of calculating the one-year suspension directed by the State Board, the appellant was to be credited with the two-month period between the Board of Examiners' action of November 3, 2005 suspending the appellant's certification and January 4, 2006, at which time the State Board of Education stayed the Board of Examiners' action. In response, the Deputy Attorney General representing the Board of Examiners pointed out that, by a letter decision issued on behalf of the State Board of Education on November 18, 2005, the suspension of appellant's certifications had been

² See, supra, p.4.

stayed as of that date. Upon review, appellant's counsel confirmed that this information was correct and, accordingly, amended his motion so as to seek credit for fifteen days.

Upon review of the arguments of counsel, we clarify our decision of October 4, 2006. Under that decision, the appellant is entitled to credit toward the one-year suspension for all periods during which she has already suffered suspension of her certification, including the 15-day period between the Board of Examiners' action of November 3, 2005 and the stay of that decision granted on November 18, 2005.

December 6, 2006

Date of mailing _____