

SBE #0506-153
SB # 18-06

IN THE MATTER OF THE CERTIFICATES : STATE BOARD OF EDUCATION
OF THEODORE WURSTER. : DECISION ON MOTION

Decision on motion by the State Board of Examiners issued on April 5, 2006

For the Respondent-Movant, Bucceri & Pincus (Sheldon H. Pincus, Esq., of
Counsel)

For the Petitioner-Respondent, Cynthia Raymond, Deputy Attorney General
(Zulima V. Farber, Attorney General of New Jersey)

This matter is before us by virtue of a motion for leave to appeal filed on behalf of Theodore Wurster (hereinafter "respondent"). By this motion, respondent is seeking a stay of the proceedings that were initiated against him by the State Board of Examiners on November 3, 2005 when it issued an Order to Show Cause as to why his certification should not be revoked or suspended. The Order was based on an investigative report by the Division of Youth and Family Services which found that allegations of sexual abuse against respondent had not been substantiated but which expressed "concerns" about respondent's conduct.

On December 13, 2005, respondent filed his Answer to the Order to Show Cause, denying all of the allegations set forth in the Order. Respondent also sought a stay of the proceedings initiated by the Order until resolution of the tenure charges that had been certified against him on May 15, 2005 by the Elizabeth Board of Education

and which had been transmitted to the Office of Administrative Law for a hearing by the Acting Commissioner of Education pursuant to N.J.S.A. 18A:6-10.

In a letter dated April 5, 2006 from the Acting Secretary of the State Board of Examiners to respondent's counsel, respondent was notified that the Board of Examiners had reviewed his motion for a stay on January 19, 2006 and had voted to deny the motion on March 30, 2006. The Acting Secretary stated that:

...Plainly, [respondent] will not suffer irreparable harm if a stay is not granted because the conduct underlying the tenure matter and the certification hearing is the same. Even assuming that the certification issue is resolved before the tenure case, if the tenure matter is resolved in your client's favor, he may apply for certification after revocation. Nor has he demonstrated that his underlying legal right is settled and that he has a likelihood of prevailing on the underlying claim.

After reviewing the matter, we grant respondent's motion for leave to appeal. We also direct that the proceedings before the State Board of Examiners be stayed, and we direct that the State Board of Examiners transmit the matter to the Office of Administrative Law for consolidation with the tenure proceedings.

As the Acting Secretary of the State Board of Examiners stated in his letter, the conduct upon which the Board of Examiners issued its Order to Show Cause is the same conduct upon which the tenure charges are based. Pursuant to the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 et seq., respondent is being afforded a hearing before an Administrative Law Judge. That hearing will adjudicate the factual basis upon which both the tenure charges and the Order to Show Cause are based. Once the factual record is established, the Commissioner of Education will make a final determination as to whether the conduct established by the record warrants a penalty

with respect to respondent's tenured employment with the Elizabeth Board of Education, and, if so, the Commissioner will impose the appropriate penalty under the standards established in In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967).

Under the Tenure Employees Hearing Law, respondent will be afforded full due process protections before any determination of guilt is made and before any penalty is imposed by the Commissioner of Education with respect to respondent's tenured employment. Respondent is entitled to no less with regard to the potential revocation or suspension of his certification. In this respect, we reiterate that the tenure charges against respondent implicate his employment by a specific district board of education. In contrast, a determination made by the State Board of Examiners may result in revocation or suspension of respondent's certification, thereby foreclosing him from teaching at all. Respondent must be afforded the same degree of due process where his ability to practice his profession is at risk as he is being accorded where it is his employment by a specific district board that is at issue. Given that the allegations against respondent in the Order to Show Cause arise from the same conduct being adjudicated in the tenure proceedings, the State Board of Examiners should refrain from exercising its jurisdiction to revoke or suspend respondent's certification until the tenure charges are fully adjudicated and the Commissioner of Education has rendered a final decision with respect to those charges. City of Hackensack v. Winner, 82 N.J. 1 (1980); Hinfey v. Matawan Reg. Bd. Of Ed., 77 N.J. 514 (1978).

Therefore, the State Board of Education stays the proceedings before the State Board of Examiners and directs the Board of Examiners to transmit the matter to the

Office of Administrative Law for consolidation with the tenure proceedings currently pending there.

June 7, 2006

Date of mailing _____