

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
DIANE DAVIS : ORDER OF REVOCATION
_____ : DOCKET NO: 695-04/02-290

At its meeting of April 11, 2002, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education captioned In the Matter of the Tenure Hearing of Diane Davis, Docket No. 84-3/97 (January 4, 1999.) In that decision the Commissioner dismissed tenure charges that the State-Operated School District of the City of Newark had brought against Diane Davis because the parties had settled the matter. Davis currently holds a Teacher of Music certificate.

This case originated when the State-Operated School District of the City of Newark certified tenure charges against respondent, Diane Davis. The district had charged her with unbecoming conduct and gross insubordination for, among other things, using profane language, making threats of bodily harm against district employees, calling students stupid, leaving her class unattended and ignoring directives of her supervisor on numerous occasions. In addition, the district ordered Davis to undergo a psychiatric examination, which she refused to do.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Elinor Reiner heard testimony on several days in June 1998. Prior to continuing the hearing, the parties settled the matter. Davis agreed to resign from her tenured position and to relinquish her teaching certificates and the district agreed to withdraw the tenure charges. The Commissioner approved the settlement on January 4, 1999 and directed Davis to submit

her certificate to the State Board of Examiners within 30 days of the date of the decision with a sworn statement indicating that she did not oppose the revocation of the certificate. The Commissioner also transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Davis' certificate. Although the State Board of Examiners requested Davis' certificate and an affidavit pursuant to the Commissioner's order, Davis never responded.

Thereafter, on April 11, 2002, the State Board of Examiners issued an Order to Show Cause to Davis as to why her certificate should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been levied in the tenure hearing.

The Board sent the Order to Show Cause to Davis by regular and certified mail on May 30, 2002. The Order provided that Davis must file an Answer to the Order within 20 days. Davis filed an Answer on June 7, 2002. In her Answer Davis admitted that the district had brought tenure charges against her. She also stated that she decided to retire rather than continue to fight the tenure charges in order to bring stability to her household. She added that she had been with the district for 25 years when the State took over the Newark school system. (Answer, ¶ 1.) In the remainder of her Answer, Davis gave a long, detailed account of the procedural history of her tenure grievances and added that the charges of unbecoming conduct were lies and misrepresentations. (Answer, ¶ 3.) She also indicated that the Board of Examiners had no basis upon which to revoke her certificate and that, with the exception of the tenure case being discussed, there were never any complaints about her teaching performance. (Answer, ¶¶ 5-6.)

Thereafter, the Order to Show Cause proceeding was transferred to the OAL. Administrative Law Judge (ALJ) Barry N. Frank conducted a hearing in March 2003 and closed the record on May 5, 2003. The ALJ issued his Initial Decision on May 8, 2003. In the Matter of the Certificate of Diane Davis, OAL Dkt. No. EDE 5834-02 (St. Bd. of Examiners, May 8, 2003).

In that decision the ALJ concluded that the Board of Examiners had proven, by a preponderance of the credible evidence, its allegation that Davis had engaged in conduct unbecoming a teacher. In fact, Judge Frank noted that Davis' testimony was "defensive of each and every incident but not dispositive of explaining why any of the incidents took place or even why any of the actions she was accused of were even excusable." Id. at 4. Accordingly, Judge Frank attributed little credibility to Davis' testimony. Ibid. ALJ Frank found that Davis' behavior "speaks for itself" and that "no provocation can excuse the behavior exhibited by Ms. Davis." Id. at 5. Thus, the ALJ concluded that, based on the overwhelming testimony at the hearing, Davis' conduct was inexcusable and intolerable in a school setting and the only possible penalty was the revocation of her teaching certificate. Id. at 5-6.

The ALJ filed his Initial Decision with the Board of Examiners for consideration on May 9, 2003. Neither party filed exceptions to the decision. Thus, it is now up to the Board of Examiners to adopt, modify or reject the Initial Decision. N.J.S.A. 52:14B:10.

The Board of Examiners has thoroughly reviewed the Initial Decision in this case. After full consideration, the Board of Examiners adopts the Initial Decision in this matter.

The Board of Examiners agrees with the ALJ that Davis' conduct was unbecoming a teacher. Her extensive use of profanity leveled against both students and

staff and her insistent disregard of her superiors' directives militate her removal from the classroom.

The State Board of Examiners may revoke or suspend the certification of any certificate holder based on demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.A.C. 6:11-3.4. "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. Nothing in Davis' behavior, as proven in this proceeding, demonstrates that she had even a modicum of understanding as to what is expected of a teaching professional. Her actions fall so far below that standard that the Board of Examiners has no choice but to agree with the ALJ's conclusion that revocation is warranted here. Consequently, after review of the entire record, we adopt the ALJ's Initial Decision in this matter.

Accordingly, it is therefore ORDERED that Diane Davis' Teacher of Music certificate be revoked on this 12th day of June 2003. It is further ORDERED that Davis return her certificate to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Joan E. Brady, Secretary
State Board of Examiners

Date of Mailing: July 9, 2003

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