

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF: STATE BOARD OF EXAMINERS
HATTIE BLACK : ORDER OF REVOCATION
_____ : DOCKET NO: 629-05/01-289

At its meeting of May 8, 2003, the State Board of Examiners reviewed a decision forwarded by the Office of Administrative Law (OAL) that had recommended that Hattie Black, a certified teacher, have her teaching certificate revoked due to unbecoming conduct. Black currently holds Teacher of Elementary School, Principal/Supervisor and Supervisor certificates.

Black was a principal accused of breaching the security of the Elementary School Proficiency Assessment test (ESPA.) The State-Operated School District of the City of Newark (Newark) had certified tenure charges against Black; the resulting tenure hearing ended in a settlement in which Black resigned from her tenured position in exchange for six months' back pay and benefits. The Commissioner referred the matter to the State Board of Examiners for consideration of the revocation or suspension of Black's certificates pursuant to N.J.A.C. 6:11-3.6. On May 10, 2001 the Board of Examiners issued an Order to Show to Black as to why her certificates should not be revoked or suspended. The Board of Examiners' Order was predicated on the conduct enumerated in the tenure charges.

After Black responded, the matter was transferred to the Office of Administrative Law (OAL) for hearing. In her Answer, Black had admitted that Newark had brought tenure charges against her but denied the substance of those charges. She also argued that even if the charges were true, they did not justify the revocation or suspension of her certificates. Administrative Law Judge (ALJ) Edith Klinger heard testimony on December 9, 2002 and closed the record on February 24, 2003. On March 12, 2003 ALJ

Klinger issued her decision. In the Matter of the Certificates of Hattie Black, OAL Dkt. No. EDE 5140-02 (St. Bd. of Examiners, March 12, 2003).

In that decision the ALJ concluded that the Board of Examiners had proven its allegation that Black had engaged in conduct unbecoming a teaching staff member by violating the security of a field test “with full advance knowledge of the impropriety and consequences of her actions.” Id. at 9. In fact, as Judge Klinger noted, Black’s conduct did not meet the high standards to which teachers and, by extrapolation, principals are held because of the influence they exercise over their students.” Ibid. Klinger did not believe Black’s assertions that she was unaware that the ESPA field test was a secure test. Klinger also did not credit Black’s statements that she wanted the test for grant writing purposes. Id. at 8. Thus, the ALJ concluded that, based on Black’s conduct, the only possible penalty was revocation of her teaching certificates. Id. at 10.

As noted earlier, the ALJ’s Initial Decision was filed with the Board of Examiners for consideration on March 13, 2002. On March 21, 2003, Black filed exceptions to the Initial Decision. In those exceptions, Black argued that the ALJ’s determination was without foundation. (Exceptions, p. 1.) Black contested the Judge’s assertions that she purposely waited until the two ESPA test coordinators were out of the building to ask a subordinate for the copy of the test. (Exceptions, pp. 1-2.) Further, she disputed that the record supported ALJ Klinger’s conclusion that Black had reasons for taking the ESPA other than writing grant proposals. Finally, Black argued that the Board of Examiners had never presented any testimony to support the judge’s conclusion that Black had a strategy in mind to disseminate the test when she took the ESPA home. (Exceptions, pp. 3-4.)

The Attorney General’s office replied to Black’s exceptions on behalf of the Board of Examiners. In that reply the Deputy Attorney General (DAG) asserted that the record amply supported Judge Klinger’s findings. The DAG stated that Judge Klinger

found Black's protestations that she was unaware of the security surrounding the ESPA "incredible." (Reply Exceptions, p. 2.) The DAG recounted those instances in the record that supported Judge Klinger's assertion that Black knew or should have known that the ESPA was a secure test. (Reply Exceptions, p. 2.) The deputy also argued that Judge Klinger was correct in concluding that Black could not have taken the ESPA for grant writing purposes since, among other things, "Ms. Black admitted that a needs assessment must be completed when requesting the grant yet the test had not been graded, nor the results known." (Reply Exceptions, p. 3.) Finally, the Deputy argued that even if Black did not know the test was secure, her actions evidenced a disregard for her responsibilities to the school and its students and constituted conduct unbecoming a teacher or supervisor..(Reply Exceptions, p.4.) Thus, according to the DAG, ALJ Klinger properly concluded that Black's actions warranted revocation of her teaching certificates. (Reply Exceptions, p.4.)

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 and the exceptions and reply exceptions filed in this case. After full consideration, the Board of Examiners adopts the Initial Decision in this matter with clarification.

ALJ Klinger determined that Black had engaged in conduct unbecoming a teacher. The record amply supports the ALJ's conclusion in this regard. For example, the ALJ noted the warning prominently displayed on the cover page of the ESPA Test booklet:

SECURITY BREACHES may have financial consequences for the **district**, professional consequences for the **staff**, and disciplinary consequences for **students**. The Grade 4 ESPA test booklet and its contents are **secure materials**. Under no circumstances may any of the enclosed contents be conveyed orally or copied, either manually or electronically. All test booklets **must** be returned to the Grade 4 ESPA contractor.

Initial Decision, slip op. at 4. Moreover, ALJ Klinger further underscored that anyone handling a test booklet would have known of the secure nature of the test and the consequences that would result from a security breach. Id. The record also revealed that test security was an ongoing concern at Burnett school where Black was principal and that numerous memos had been distributed which specifically mentioned the possibility of certificate revocation for security breaches. Id. at 4-6. Finally, Black's own Vice Principal, William Saks, testified that he had issued a memo to teachers under Black's name that discussed the ESPA field test and the consequences of breaching security. Saks added that not only did he share the contents of that memo with Black, but also the other bulletins he had distributed on the subject. Id. at 6.

The Board of Examiners therefore agrees with the ALJ that "Black's conduct constituted conduct unbecoming a teacher, supervisor and principal in that she violated the security of a field test with full advance knowledge of the impropriety and consequences of her actions." Initial Decision, slip op. at 9. In fact, this finding, without more, forms a sufficient basis for the Board to consider the appropriate penalty in this matter and therefore the Board does not need to address Judge Klinger's other findings with regard to Black's actions.

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. 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 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). In this instance, there can be no dispute that Black's actions, knowing or not, were detrimental to test security. Although there is no proof that Black had the opportunity to use the test to her own advantage, at the very least her actions show a

disregard for the procedures that the Department of Education mandated. The Board of Examiners agrees with the ALJ that Black's actions warrant a severe penalty. Nothing in Black's behavior, as proven in this proceeding, demonstrates that she acted with an appreciation of her responsibilities as a principal and school leader. Thus, the Board of Examiners has no choice but to agree with the ALJ's conclusion that revocation is the appropriate penalty here. Consequently, after review of the entire record, we adopt the ALJ's Initial Decision, as clarified, in this matter.

Accordingly, it is therefore ORDERED that Hattie Black's Teacher of Elementary School, Principal/Supervisor and Supervisor certificates be revoked on this 8th day of May 2003. It is further ORDERED that Black return her certificates to the Secretary of the State Board of Examiners, Office of Licensing, PO 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: June 6, 2003

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