

EDU # 12270-95  
SBE #478-06/98-205  
SB # 28-00

IN THE MATTER OF THE CERTIFICATES : STATE BOARD OF EDUCATION  
OF JOY NORTHROP DEVINCENZI. : DECISION

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Decided by the State Board of Examiners, November 4, 1999

For the Petitioner-Respondent, Michelle L. Miller, Deputy Attorney General  
(John J. Farmer, Attorney General of New Jersey)

For the Respondent-Appellant, Beth L. Finkelstein, Esq.

Joy Northrup DeVincenzi (hereinafter "respondent") is challenging a five-year suspension by the State Board of Examiners of her certification to serve as a School Administrator, Assistant Superintendent of Business and School Business Administrator.<sup>1</sup> The Board of Examiners took this action on the basis of a decision rendered by the Commissioner of Education in Board of Education of the Borough of Lincoln Park v. Board of Education of the Town of Boonton, 97 N.J.A.R.2<sup>nd</sup> (EDU) 592 (hereinafter "Lincoln Park v. Boonton"). In that case, Lincoln Park, a sending district, challenged the actions of the Boonton Board and the respondent, who was Superintendent of Schools in Boonton, in relation to the selection of a principal for Boonton High School. Adopting the Initial Decision of the Administrative Law Judge ("ALJ"), the Commissioner held that the Boonton Board and its Superintendent had acted arbitrarily, capriciously, in bad faith and in violation of the spirit of the agreement

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<sup>1</sup> Respondent also possesses certification as a teacher, but the Board of Examiners did not take action against any of her teaching endorsements.

between the two districts for the selection process for a new principal. As a result, the Commissioner concluded that the appointment that had been made by the Boonton Board was invalid, and he directed that a new selection process be developed and implemented. The Commissioner discounted as inappropriate the Lincoln Park Board's suggestion that he remove the respondent from the selection process, but he directed that a copy of his decision be forwarded to the State Board of Examiners for its review.

The State Board of Examiners issued an order to show cause on the basis of the ALJ's findings as they had been adopted by the Commissioner. After reviewing the charges and the papers filed by the respondent in response to the order to show cause, the Board of Examiners determined that no material facts related to the respondent's conduct were in dispute. Then, affirming that it could "rely on the facts as found at the tenure hearing...when determining whether an individual has engaged in conduct unbecoming a teacher," the Board of Examiners found that the respondent's actions constituted "conduct unbecoming a certificate holder." Board of Examiners' Decision, slip op. at 6. The Board of Examiners concluded that the respondent's actions constituted just cause to act against her certificates pursuant to N.J.A.C. 6:11-3.6(a)1. As articulated by the Board of Examiners:

In this instance, De Vincenzi deviated from the behavior expected of a chief school administrator. While her own board may extend her broad latitude, she still had some obligation to both districts to choose the best principal using the process agreed to by the selection committee. Unilaterally changing the process or imposing different criteria for selection may be acceptable to her board (which was involved in an ongoing dispute with Boonton [sic]), but is clearly unacceptable to the ALJ, the Commissioner and this Board. Thus, these actions point squarely to a finding of conduct unbecoming a certificate holder.

Board of Examiners' Decision, slip op. at 7.

Acknowledging that the respondent had found herself in a difficult situation and that all of her actions were taken with the knowledge and approval of her employing board, the Board of Examiners found that revocation of the respondent's certificates would be too severe a penalty. However, underscoring the need to "send a strong message regarding appropriate administrator conduct and the regulation of the teaching profession," id. at 8, the Board of Examiners concluded that the respondent's "lapses as superintendent were sufficiently serious...to warrant her suspension from the profession as an administrator for a substantial period of time." Id. at 9 (emphasis in original). It then held that a five-year suspension of the respondent's administrative certificates would protect the public while not unduly punishing the respondent.

Respondent appealed to the State Board of Education from the Board of Examiners' decision. She argues that the Board of Examiners' decision should be reversed because the Commissioner's decision upon which it relied did not focus on her conduct as it related to her employment. She also contends that there are issues of material fact involved that preclude a grant of summary decision.

After a careful review of the record, including the Commissioner's decision in Lincoln Park v. Boonton, we agree with the respondent. Although the respondent was also named as a respondent in the Lincoln Park matter, that case challenged the propriety of the implementation of a principal selection process under an agreement between the Lincoln Park Board and the Boonton Board. The relief being sought by Lincoln Park was an order from the Commissioner vacating the appointment made by the Boonton Board and directing that the Boonton Board conduct the selection process

anew. Accordingly, during the proceedings before the Administrative Law Judge, the respondent's conduct was at issue as it related to the propriety of the appointment at issue, and there is no indication in the ALJ's decision that she considered the respondent's actions in the context of her employment as a superintendent for the Boonton Board.

As set forth in the Commissioner's decision, Lincoln Park filed exceptions to the ALJ's determination seeking, in addition to other relief,<sup>2</sup> an express prohibition against any participation in the selection process by the respondent. Lincoln Park further sought a recommendation from the Commissioner "that the State Board of Examiners initiate proceedings to revoke all of [the respondent's] certificates."

Until that time, the respondent had been represented by the same counsel as the Boonton Board. The Commissioner's decision indicates that once Lincoln Park's exceptions were filed, the respondent sought to be represented by separate counsel. In the absence of objection from the other parties, the Commissioner granted the respondent's request, and counsel for the respondent filed exceptions on her behalf.

After reviewing the exceptions of the parties and the replies thereto, the Commissioner rejected as inappropriate Lincoln Park's "suggestion" that he remove the respondent from the principal selection process. Further, although he directed that a copy of his decision be forwarded to the Board of Examiners, the Commissioner did not recommend, as he had been urged by Lincoln Park in its exceptions, that action be taken against the respondent's certificates.

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<sup>2</sup> In its exceptions, Lincoln Park also sought further relief with respect to its representative on the Boonton Board.

Under these circumstances, the ALJ's decision in the Lincoln Park case alone cannot be considered to provide a sufficient evidentiary basis for the action taken by the Board of Examiners in this matter. Quite simply, the question of respondent's conduct was not litigated in relation to her employment. Because the respondent was not on notice that her employment was at issue, she was not represented by independent counsel during the hearing before the ALJ. Consequently, the issues involved here that relate to her ability to be employed as a school administrator were not fully and fairly litigated in the proceedings in Lincoln Park v. Boonton. It would be inconsistent with the principles of due process and fundamentally unfair to bar respondent from employment as a school administrator in any capacity by any board of education in New Jersey for five years on the basis of the findings in that decision.

We therefore remand this matter to the State Board of Examiners with the direction that it be transmitted to the Office of Administrative Law for further proceedings consistent with our decision herein in order to determine whether the respondent's conduct in relation to the principal selection that was invalidated in Lincoln Park v. Boonton warrants suspension of her certification as a school administrator.

August 2, 2000

Date of mailing \_\_\_\_\_