

EDU # 8665-98  
SBE #433-01/97-192  
SB # 39-99

IN THE MATTER OF THE REVOCATION :  
OF THE TEACHING CERTIFICATE OF : STATE BOARD OF EDUCATION  
ROBERT CRAWFORD BY THE STATE : DECISION  
BOARD OF EXAMINERS :

---

Decided by the State Board of Examiners, June 17, 1999

For the Petitioner-Respondent, Terri A. Cutrera, Deputy Attorney  
General (John J. Farmer, Jr., Attorney General of New Jersey)

For the Respondent-Appellant, Horn, Goldberg, Gorny, Plackter, Weiss &  
Perskie (Frederick F. Fitchett, III, Esq.)

This matter involves an appeal from a decision of the State Board of Examiners to revoke the standard certification to serve as a teacher of psychology which it had issued to Robert Crawford (hereinafter "respondent") in May 1995 pursuant to N.J.A.C. 6:11-5.1 et seq.<sup>1</sup> After the respondent's attorney filed his notice of appeal to the State Board of Education, the Director of the State Board Appeals Office requested that the Board of Examiners certify the record to the State Board as required by N.J.A.C. 6:2-1.8.<sup>2</sup> In response, the Board of

---

<sup>1</sup> The original Order to Show Cause was issued on February 14, 1997, but was amended on February 26, 1998 to detail facts included in an investigative report by the Department of Education's Office of Compliance.

<sup>2</sup> N.J.A.C. 6:2-1.8 provides:

(a) The record on appeal shall include all papers, tape recordings, computer disks and exhibits on file with the Commissioner, Board of Examiners or School Ethics Commission, with all entries

Examiners provided 34 items together with a cover memorandum dated December 9, 1996 from the Secretary of the Board of Examiners to its members. Upon further request, the Board of Examiners provided another packet of documents with a similar cover memorandum dated June 2, 1999 to the members of the Board of Examiners. In response to an additional request, the Board of Examiners supplied the record that had been transmitted to it by the Office of Administrative Law (“OAL”) after the Administrative Law Judge (“ALJ”) had issued his initial decision and recommendation in the matter.

As a result of the Board of Examiners’ first response to the State Board of Education’s request for the record, the Director of the State Board Appeals Office prepared a statement of the items included in that response.<sup>3</sup> This statement was provided to both parties, as well as transmitted to the Board of Examiners in its quasi-judicial capacity. In response to this memorandum, the Deputy Attorney General representing the Board of Examiners in its prosecutorial role sent copies of the exhibits admitted into evidence in the proceedings at OAL to the State Board of Education. In her accompanying letter of December 28, 1999, the Deputy indicated that not all of the materials that had been supplied by the Board of Examiners had been entered into evidence and that some exhibits had not been

---

as to matters made on the record, any stenographic transcript, and all papers filed with or entries made on the records of the State Board.

- (b) Upon notice of appeal, the Commissioner or Board of Examiners shall certify the record and remit the record to the State Board, together with the notice and two copies of the decision appealed from.
- (c) The record shall be retained by the State Board except that any party may be permitted to use any portion of such record in the State Board’s appeals office.

<sup>3</sup> The statement reflected that the Board of Examiners had provided thirty-four items to the State Board of Education in its first response. One of those items was the exhibits to the investigative report, which was comprised of sixteen documents.

included in the Board of Examiners' record. The Deputy also sent a copy of this letter to counsel for respondent.

By letter dated December 29, 1999, respondent's attorney advised the State Board of Education that the items supplied by the Board of Examiners had included documents that were not part of the record before the ALJ and which had not been produced during discovery. Counsel expressed concern that the fact that the Board of Examiners would review additional documents unknown to his client "may suggest an unfair bias in the process which might be violative of a due process review."

In addition, by letter of January 3, 2000, counsel for respondent replied to the Deputy's letter of December 28. In this letter, counsel asserted that:

I do not believe that you have been properly provided with a certification of the record below by the State Board of Examiners. [The DAG] as representative of the DOE in prosecuting this case, would not appear to be the appropriate person to be correcting the record...since she is clearly in an adversary position to the respondent....

By letter of January 3, 2000 to counsel for respondent, the Deputy sought to "clear any confusion which might exist concerning the record and concerning the appropriateness of my responses to your discovery requests in this case." The Deputy's correspondence set forth a detailed description of the discovery process that had taken place during the OAL proceedings.

In view of the dispute between the parties to the underlying case with respect to exactly which items constitute the record, we remand this matter to the State Board of Examiners for settlement of the record. Cf. R. 2:5-5. Under the

circumstances, we direct the Board of Examiners to transmit the case to the Office of Administrative Law for such proceedings as are necessary to correct the record. See In the Matter of the Petition for Review of Opinion No. 583 of the Advisory Committee on Professional Ethics, 107 N.J. 230 (1987).

February 2, 2000

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