

State Board of Examiners Dkt No. 1516-178
OAL Dkt. No. EDE 10769-16
Agency Dkt. No. 3-2/21A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Rita O'Malley, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, December 10, 2020

For the Respondent-Appellant, Victoria A. Lucido, Esq.

For the Petitioner-Respondent, State Board of Examiners, Amna Toor,
Deputy Attorney General (Andrew J. Bruck, Acting Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with appellant Rita O'Malley's appeal of the Order of the State Board of Examiners (Board), dated December 10, 2020, revoking her Teacher of Social Studies, Teacher of the Handicapped, and Learning Disabilities Teacher-Consultant (LDTC) certificates. Following the issuance of an Order to Show Cause by the Board and a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that appellant's conduct was neglectful and evidenced incompetence, and imposed a three-year suspension, with a requirement that appellant complete an educational program on testing procedures and educational evaluations to be approved by the Board.¹ The ALJ reasoned that revocation was not the appropriate penalty because appellant had

¹ In its exceptions to the Initial Decision, the Board argued that it does not have the authority to require this type of remedial program. This issue was not addressed in the Order of Revocation, presumably because the Board altered the penalty from a suspension to revocation, making the issue moot. As the Commissioner herein affirms the Order of Revocation, the question of a remedial program remains moot. Nonetheless, the Commissioner notes that *N.J.A.C. 6A:8B-4.5* does not include a provision whereby the Board may order the completion of a remedial program as a requirement for reinstatement following a suspension.

already been sanctioned for her conduct through the loss of her tenure and her former teaching position, and her previous record was clear. Thereafter, the Board adopted the Initial Decision but modified the penalty to revocation of appellant's certificates.

On appeal, appellant argues that the Board acted in an arbitrary, capricious, and unreasonable manner when it modified the three-year suspension recommended by the ALJ to a penalty of revocation. According to appellant, the Board improperly relied on evidence regarding allegedly fraudulent mileage reimbursement vouchers that the ALJ determined to be unsubstantiated.² Appellant also contends that the cases relied on by the Board to support the penalty of revocation all involved willful conduct, which are distinguishable because the ALJ found that appellant's conduct was neglectful and evidenced incompetence, not that appellant's faults constituted conduct unbecoming a teacher. Appellant urges the Commissioner to adopt the Initial Decision and the ALJ's recommendation of a three-year suspension, based on the fact that appellant's record prior to this matter was clear and she has already been sanctioned through the loss of her tenure.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute her judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*. With regard to reviewing a sanction imposed by the Board, the Appellate Division has defined the standard as determining whether the "punishment is so disproportionate to the offense, in light of all the circumstances,

² Appellant requests that, if the mileage submissions continue to be used by the Board to support a harsher penalty than that imposed by the ALJ, appellant be permitted to introduce evidence from a handwriting expert to rebut that evidence. As detailed herein, the Board did not rely on evidence of alleged fraud to support its decision, and the Commissioner accepts the ALJ's finding that appellant did not submit fraudulent mileage reimbursements. Therefore, the Commissioner finds it unnecessary to reopen the record to receive additional evidence on this topic.

as to be shocking to one's sense of fairness." *In re Certificates of Benjamin Norton*, 2016 N.J. Super. Unpub. LEXIS 2291, *6-7 (internal citations and quotations omitted).

The Commissioner first notes that the Board's decision does not modify any findings of fact or legal conclusions of the Initial Decision. Additionally, appellant does not contest those findings or conclusions on appeal, and, in fact, urges the Commissioner to adopt the Initial Decision. Accordingly, the Commissioner accepts the findings and conclusions reached by the ALJ in the Initial Decision. Specifically, the Commissioner finds that appellant failed to administer tests, incorrectly scored tests, and incorrectly reported test results, as thoroughly detailed in the Initial Decision. Appellant's failures involved eleven students, a number of whom experienced more than one issue. Additionally, the Commissioner accepts the ALJ's finding that appellant's supervisor was credible regarding the tests that should have been administered, and that appellant was less credible regarding this topic. The Commissioner further finds that the record as a whole does not show that appellant submitted false mileage reimbursement requests, that appellant was credible that she did not hold herself out as having a doctorate, that the evidence did not prove a pattern of tardiness to warrant a negative finding, and that appellant's request to use vacation time instead of personal days was inadvertent. Finally, the Commissioner concludes that appellant's conduct was neglectful and evidenced incompetence.

The question of the appropriate penalty is the only area in which the Board differed from the ALJ, and the only one that appellant seeks to overturn on appeal. While appellant argues that the Board improperly relied on evidence of allegedly fraudulent mileage reimbursements that the ALJ found to be unsubstantiated, the Commissioner's review of the Board's decision demonstrates that it was not based on any evidence of fraud. Appellant seems

to be confusing arguments made by the Deputy Attorney General during the proceedings at the OAL and in exceptions to the Initial Decision – which are summarized in the Order of Revocation, along with arguments made by appellant – with the basis for the Board’s decision. Contrary to appellant’s arguments, the Board did not rely on evidence of fraud in assessing the penalty. In fact, the Board specifically noted that the Board found appellant’s conduct was “egregious and careless, if not intentionally fraudulent.” This statement, combined with the Board’s acceptance of the ALJ’s findings of fact and legal conclusion, and the Board’s multiple references throughout the section of the decision analyzing the appropriate penalty for appellant’s “errors” and “failures” – rather than fraud – clearly demonstrate that the Board did not find appellant’s conduct to be fraudulent or base its decision on alleged fraud. Therefore, the Commissioner finds appellant’s argument unavailing.

Appellant also argues that revocation is not warranted because her conduct was not willful. However, the Commissioner concurs with the Board that, even if not willful, appellant’s errors were so significant and pervasive, demonstrating a pattern of conduct that the Board found to be egregious and careless, that revocation of her certifications is appropriate. The ALJ noted that appellant’s “conduct was not an isolated incident but rather a pattern of significant errors in the performance of her duties as an LDTC.” As the ALJ noted, the testing and evaluation done by an LDTC are critical to determining whether a student receives special education services, as well as the nature, frequency, duration, and other specifics related to the delivery of those services. It was not arbitrary, capricious, or unreasonable for the Board to conclude that appellant’s repeated failures to live up to these critical responsibilities warranted revocation of her certificates, nor does the Commissioner find that this penalty shocks one’s sense of fairness.

Finally, appellant argues that her loss of tenure and previous good record should mitigate her penalty. The Commissioner notes that *N.J.A.C.* 6A:9B-4.5(a) specifically contemplates that, following a teacher's loss of tenure or employment, the Board may initiate proceedings to suspend or revoke the teacher's certificates. Accordingly, the possible consequences of incompetence or unbecoming conduct may be *both* loss of tenure/employment *and* revocation of certificates, and the former does not mitigate the latter. Furthermore, while the Commissioner acknowledges appellant's prior good record, that alone does not suffice to mitigate a pattern of conduct that involved multiple errors, omissions, and failures relating to eleven different students.

Accordingly, the decision of the State Board of Examiners is affirmed. Appellant's Teacher of Social Studies, Teacher of the Handicapped, and Learning Disabilities Teacher-Consultant certificates are hereby revoked.³



ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 12, 2021
Date of Mailing: August 12, 2021

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.