

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
JOAN MCNUTT : ORDER OF SUSPENSION  
\_\_\_\_\_ DOCKET NO: 562-04/00-257

At its meeting of April 6, 2000, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Joan McNutt from her tenured position with the State-Operated School District of the City of Jersey City (hereafter District) for charges of unbecoming conduct. I/M/O the Tenure Hearing of McNutt, Dkt. No. 419-9/96 (January 9, 1998.) McNutt currently holds Elementary School Teacher, Teacher of Mathematics and Principal/Supervisor certificates.

This case originated when the District certified tenure charges against respondent, Joan McNutt. McNutt was employed as a Supervisor of Mathematics. The District charged her with unbecoming conduct for distributing a portion of the 1995 Early Warning Test (EWT) even though she knew it was a secure test and was not to be possessed or distributed by or to any school personnel.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Jeffrey A. Gerson heard testimony and, after receiving post-hearing submissions, closed the record. He issued an Initial Decision on January 9, 1998.

In that decision ALJ Gerson recounted that McNutt became a supervisor of mathematics in August 1995 and had attended at least two meetings at which the security

of the 1995 EWT was discussed. (Initial Decision, slip op. at 3.) In addition, McNutt was given a memo that indicated that security breaches would be dealt with harshly. Nevertheless, at some point in September 1995, McNutt mailed the math portion of the 1995 EWT (which she had received from another math supervisor) to twelve teachers she supervised. (Initial Decision, slip op. at 3-4.) She also personally distributed a copy of the 1993 EWT to teachers. After her supervisor discovered McNutt's actions she was questioned regarding her conduct. McNutt initially denied distributing the EWT to more than one individual; she subsequently admitted her actions, although she consistently denied that she knew the test was secure. (Initial Decision, slip op. at 4-5.)

At her hearing, McNutt admitted to the distribution of the EWT. She also admitted that she lied to her supervisors regarding this conduct when she was initially interviewed. (Initial Decision, slip op. at 5.) McNutt also testified that she had no idea that the 1995 EWT was a secure test, but rather believed it available for distribution like the 1993 EWT. (Initial Decision, slip op. at 6.) The ALJ did not find McNutt's testimony credible on this point. Instead, he noted the clandestine manner in which she had accomplished the 1995 test distribution, *i.e.*, mailing the math portion of the 1995 EWT to teachers' homes without benefit of a cover sheet. Moreover, when confronted about the distribution, McNutt lied. (Initial Decision, slip op. at 6.) As the ALJ noted "If [McNutt] did actually believe that the distribution of the 1995 EWT was completely legitimate why would she fail to disclose it? If, as she contends, she did not know that distribution of the secured 1995 EWT was prohibited, why did she not, at her first interview..., simply say so?" (Initial Decision, slip op. at 6.) The ALJ found that

McNutt had knowingly possessed and distributed a portion of the 1995 EWT even though she knew it was a secure test. (Initial Decision, slip op. at 7).

After considering all the testimony, ALJ Gerson found that McNutt's conduct was improper. The Judge found that McNutt had in fact distributed the test to another staff member. He also found that McNutt's testimony was not credible when she testified that she was unaware of the new security procedures surrounding the 1995 EWT. (Initial Decision, slip op. at 7-8). The ALJ therefore concluded that the District had proven by more than a preponderance of evidence that McNutt had engaged in conduct unbecoming a teaching staff member. (Initial Decision, slip op. at 8).

In considering the appropriate penalty, Judge Gerson examined McNutt's prior record. Although McNutt had no prior disciplinary record and was, according to witnesses, "an energetic and effective member of the educational community," the Judge stated that the seriousness of McNutt's conduct "cannot be tempered." (Initial Decision, slip op. at 8.) Thus, based on his review of the entire record, the ALJ concluded that McNutt's conduct warranted a serious penalty. He determined that McNutt's breach was too substantial to allow for her continued employment in the district. (Initial Decision, slip op. at 8). Consequently, the ALJ ordered McNutt dismissed from her tenured employment. (Initial Decision, slip op. at 8).

In a decision dated March 2, 1998, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against McNutt. The Commissioner agreed with the ALJ that the local board had proven its case against McNutt with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 13). The Commissioner reiterated the Department of Education's long-standing emphasis on

the importance of maintaining test security. (Commissioner's Decision, slip op. at 14). He added that the security breach caused the Department of Education to modify the mathematics section of the March 1996 EWT, resulting in a charge of \$7,603 to the District. (Commissioner's Decision, slip op. at 15). Accordingly, the Commissioner affirmed McNutt's removal from her tenured employment with the State-Operated School District of the City of Jersey City and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding McNutt's certificates. (Commissioner's Decision, slip op. at 16). McNutt appealed from the Commissioner's decision to the State Board of Education. On October 7, 1998, the State Board of Education affirmed the Commissioner's decision. (State Bd. of Ed. Decision, slip op. at 1-2). McNutt then appealed to the Appellate Division of the Superior Court of New Jersey which affirmed the State Board's decision on January 28, 2000. IMO the Tenure Hearing of Joan McNutt, App. Div. Dkt. No. A-1710-98T2 (January 28, 2001.)

Thereafter, on April 6, 2000, the State Board of Examiners issued McNutt an Order to Show Cause why her certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing. McNutt answered the Order to Show Cause on July 7, 2000. Thereafter, at its September 21, 2000 meeting, the Board of Examiners amended the Order to Show Cause to reflect that McNutt was employed by the State-Operated School District of the City of Jersey City and not Newark as was originally stated.

The Amended Order to Show Cause was sent to McNutt by regular and certified mail on November 1, 2000. The Order provided that an Answer must be filed within 20 days.

McNutt filed an Answer on November 15, 2000. In that Answer she admitted that the ALJ had found that she had surreptitiously distributed a portion of the 1995 EWT and lied when questioned about it. She also admitted that the State Board of Education affirmed the Commissioner's decision sustaining the charges and that the Appellate Division affirmed the State Board's decision. (Answer, ¶ 5.) In the remainder of her Answer, McNutt argued that her attempt to do her job in a professional manner, which happened to violate security procedures, did not warrant the revocation or suspension of her certificates. (Answer, Separate Defenses, ¶ 1.) She added that she had an unblemished record of 17 years of service in public education. (Answer, Separate Defenses, ¶ 2.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on February 16, 2001, the Board of Examiners sent McNutt a hearing notice by regular and certified mail. The notice explained that, since it appeared that no material facts were in dispute regarding the tenure charges, McNutt had the opportunity to submit written arguments as to whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that, upon review of the charges against her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her offense warranted action against her certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

McNutt responded to the Hearing Notice on March 13, 2001. In that response, McNutt claimed that although she attended a meeting where EWT results were discussed the security of the EWT was not discussed. (Hearing Response, p. 2). She also claimed that when she met with teachers she supervised, they gave her copies of prior EWTs.

Since those tests were freely distributed, McNutt thought that the 1995 EWT could be distributed to teachers as well. She added that none of the teachers acted surprised when she mentioned she had a copy of the 1995 test. (Hearing Response, pp.2-3.) Further, McNutt argued that she thought a “secured test” meant that students could not see the test prior to its administration. (Hearing Response, p.3.) Finally, although she admitted to wrongfully distributing the test, she stated that her actions were not done knowingly or with an improper motive. (Hearing Response, p.4.) She maintained that her failure should not result in the loss of her credentials since the loss of her tenure was sufficient punishment (Hearing Response, pp.4-5).

The threshold issue before the State Board of Examiners in this matter, therefore, is whether McNutt’s conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 10, 2001, the State Board of Examiners reviewed the charges and papers McNutt filed in response to the Order to Show Cause. After reviewing her response, the Board of Examiners determined that no material facts related to McNutt’s offense were in dispute since she admitted the charges at the tenure hearing were proven and led to her dismissal. Thus, McNutt has not denied the charges in the Order to Show Cause. Accordingly, her actions regarding the improper possession and distribution of the 1995 EWT constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether McNutt’s offense as set forth in the Order to Show Cause, represents just cause to act against her certificates pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of 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 McNutt's actions, knowing or not, were detrimental to test security. Although there is no allegation that McNutt used the test to her own advantage, at the very least her actions show a disregard for maintaining up-to-date knowledge of her responsibilities as a supervisor and teaching staff member. The Board of Examiners agrees with the Commissioner that McNutt's actions warrant a serious penalty. It does believe, however, that McNutt's actions were not so egregious as to warrant the permanent revocation of her certificates. After much reflection, the Board believes that suspending all of McNutt's certificates during the next school year will properly communicate how strongly it feels about this breach.

Accordingly, on this 10th day of May 2001 it is therefore ORDERED that Joan McNutt's Elementary School Teacher, Teacher of Mathematics and Principal/Supervisor certificates be suspended effective September 1, 2001 through June 30, 2002.

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Acting Secretary  
State Board of Examiners

Date of Mailing: March 22, 2002

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

JD:MZ:kb:Joan McNutt