

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
TERRY STOCKER : ORDER  
\_\_\_\_\_ : DOCKET NO. 0304-218

At its meeting of April 1, 2004, the State Board of Examiners reviewed an Initial Decision forwarded by the Office of Administrative Law (OAL.) That decision resolved a case between Terry Stocker and the New Jersey State Board of Examiners. State Board of Examiners v. Terry Stocker, Docket No. 637-05/01 (Initial Decision, February 10, 2004.) Stocker currently holds Teacher of Elementary School, Teacher of Skilled Trades/Maintenance Mechanic and Teacher of Psychology certificates.

This case originated on May 10, 2001 when the State Board of Examiners voted to issue an Order to Show Cause to Stocker. The Order was predicated upon a report that the Division of Youth and Family Services (DYFS) had sent to Stocker's then-employer, the South Hunterdon Regional Board of Education (hereafter "District.") That report was the result of an investigation DYFS had conducted into an incident involving Stocker and several students. According to the report, Stocker had duct taped a special education student (with his consent) and watched while the other students dragged him around on the ground and videotaped the incident. The DYFS report did not substantiate physical abuse but did note concerns regarding Stocker's actions. The report raised additional concerns regarding Stocker because on prior occasions while substituting for other teachers he had showed a class how to check criminal histories on the computer, talked about growing marijuana, demonstrated the quickest method to use when killing another human being and made a comment to another teacher about wife-swapping while in the presence of a class. DYFS recommended that the district take appropriate disciplinary and corrective action regarding Stocker.

On January 25, 2001 the District served Stocker with tenure charges on four counts of conduct unbecoming a teaching staff member. Stocker resigned his tenured position on February 12, 2001. As a result, the District did not certify the tenure charges to the Commissioner. It did, however, notify the State Board of Examiners regarding what had transpired and sent a copy of the DYFS report as well as its response thereto.

After reviewing the DYFS report and the District's response, the State Board of Examiners voted to issue an Order to Show Cause to Stocker. Stocker responded to the Order on March 27, 2002. In his response, Stocker admitted that he was there when the student was duct taped and dragged on the ground by his girlfriend. Stocker also stated that he did not intervene because the intent of the students' activity was to create a funny scene for the videotape. (Answer, ¶ 6.) Stocker added that at least two teachers walked by the scene and laughed but that one coach reported the incident to the administration the next day. (Answer, ¶ 7.) Stocker stated that he was surprised that his behavior would be viewed as malicious in any way. He stated that no student was hurt and all participated voluntarily. (Answer, ¶ 8.) Stocker admitted that he should have exercised better judgment and claimed that the incident was aberrational and would not be repeated. (Answer, ¶¶ 10, 13.) He added that he had resigned his position in South Hunterdon since it would be better for all involved and at the time of his Answer had been teaching in Essex County for over a year without incident. (Answer, ¶¶ 11-12.)

After the Board received Stocker's Answer, it transmitted the matter to the Office of Administrative Law (OAL) for hearing. Administrative Law Judge (ALJ) John R. Futey heard testimony on October 17 and 21, 2003. After receiving post-hearing submissions, the ALJ closed the record and issued his Initial Decision on February 10, 2004.

In that decision, the ALJ recounted most of the undisputed facts regarding the duct tape incident. In addition, the ALJ summarized the testimony of the of the District superintendent,

two teacher/coaches who witnessed part of the incident and Stocker. The Superintendent, Dr. Simone, testified that after she viewed the videotape she contacted J.C.'s parents who were surprised and upset. (Initial Decision, slip op. at 5.) She met with Stocker the next morning and told him she was disturbed by the videotape. She placed Stocker on leave and walked him out of the building. (Initial Decision, slip op. at 6.) The matter was then turned over to the County Prosecutor and the Board attorney for further action. Dr. Simone also had her two assistants conduct an internal investigation. (Initial Decision, slip op. at 6.) The first of the two teachers who testified, Eric Mooney, stated that he was running a boys' basketball practice when there was a disruption in the gym. He observed one male student dragging J.C. into the gym and noticed that J.C. was kicking and screaming. Mooney admitted that he "flipped out" and started screaming at the various students making a commotion. (Initial Decision, slip op. at 8.) Donald Woodring, the girls' basketball coach told Mooney that his students were not involved and were just in the hallway waiting to use the gym. Mooney also testified that he was acutely aware of the accommodations J.C. needed as a special education student. (Initial Decision, slip op. at 8.) He was very upset by the incident both because he and J.C. were African-American and because he felt that the students did not understand adequately the "insult and hatred that were being displayed in these acts...." (Initial Decision, slip op. at 9.) Furthermore, while Mooney acknowledged that he had never known Stocker to be a racist, he stated that he should have known better. He added that what the acts symbolized and what they represented were as upsetting as the act itself. He was also concerned with J.C.'s safety when he was dragged into the gym. (Initial Decision, slip op. at 9.)

Donald Woodring, who was a special education teacher and girls' basketball coach at the time of the incident, also testified. He learned of the incident when some of his basketball players told him they had been reprimanded by Coach Mooney. (Initial Decision, slip op. at 10.)

When Woodring viewed the videotape, he ascertained that Stocker had taped J.C. Woodring was upset about the incident because he knew J.C.'s family and he knew they would be upset. He was also upset with Stocker and felt that his conduct was inappropriate. (Initial Decision, slip op. at 11.) Woodring did acknowledge that he had no reason to believe that Stocker acted out of malice, spite or anger and that the motive appeared to be fun. Woodring also stated that he felt that Stocker did things impulsively and was unconventional. Woodring believed that Stocker should understand that his actions could be upsetting to parents and, although apparently not motivated by race, could be viewed as such. (Initial Decision, slip op. at 11-12.)

Stocker also testified on his own behalf. He recounted the duct-taping incident and stated that the whole thing lasted approximately two minutes. At the time, he considered the entire incident as "horse play." (Initial Decision, slip op. at 13.) However, when Stocker viewed the videotape at the hearing, he stated that he was embarrassed and admitted that it looked bad out of context. He acknowledged that it was a bad decision and pledged that he would never do it again. (Initial Decision, slip op. at 13.) Once again, he denied any racial implications even though he knew others were upset about how the incident looked. Stocker also testified that he felt pressured to resign his position and that he had begun teaching in East Orange in September 2001 and had received excellent evaluations there. (Initial Decision, slip op. at 14.)

In his legal analysis of the case, ALJ Futey concluded that Stocker's suggestion that the incident was insignificant, spontaneous and fun was unpersuasive. (Initial Decision, slip op. at 15-16.) Rather, the ALJ pointed out that "even a cursory review of the taping amply demonstrates the ludicrous and hideous nature of his conduct, supervision and direction under the circumstances." (Initial Decision, slip op. at 16.) ALJ Futey found it egregious that a teacher would have suggested, participated in and directed the entire incident. According to the ALJ, this, without more, justified the revocation of Stocker's teaching certificate. (Initial Decision,

slip op. at 16.) Compounding the heinous nature of the incident were the facts that J.C. was a special education student and of African American descent in a predominantly Caucasian school setting. (Initial Decision, slip op. at 16.)

The ALJ was also not convinced that the support various parents and students gave Stocker should mitigate the impact of his conduct or the penalties attached. Instead, the ALJ found Stocker particularly culpable because he instigated the event and thereby victimized not only J.C., but the other students he drew into the event as well. (Initial Decision, slip op. at 17.) Finally, the ALJ found the videotape captured a highly disturbing scenario, “all of which was perpetrated by Stocker. It was not its length, but its content, which amply illustrate Stocker’s role in this shocking event.” (Initial Decision, slip op. at 17.) In the ALJ’s opinion, Stocker’s behavior on this one occasion, was so contrary to the public good “so as to create an indelible blot on the educational system as a whole.” (Initial Decision, slip op. at 17.) Consequently, ALJ Futey concluded that the Board of Examiners had demonstrated the reasonableness of its actions in revoking Stocker’s certificates by a preponderance of the credible evidence.<sup>1</sup> (Initial Decision, slip op. at 18.)

At its meeting on April 1, 2004, the Board of Examiners reviewed the Initial Decision. The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. After a thorough review of the record, as well as the exceptions and reply exceptions filed by the parties,<sup>2</sup> the Board of Examiners agrees with the ALJ’s analysis and disposition of this matter.

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<sup>1</sup> In his conclusion, ALJ Futey indicated that the Board of Examiners was revoking Stocker’s certificates. Actually, the purpose of the administrative hearing was to determine the merits of the Order to Show Cause. It is through its decision today that the Board will determine whether to revoke Stocker’s certificates.

<sup>2</sup> Stocker filed exceptions to the Initial Decision on March 3, 2004 and the Deputy Attorney General representing the Board of Examiners filed her reply exceptions on March 9, 2004. Thereafter, Stocker attempted to file a sur-reply. The OAL rules governing administrative hearings do not contain a provision allowing for the filing of a sur-reply. N.J.A.C. 1:1-18.4. Consequently, the Board of Examiners did not consider Stocker’s second submission in deciding this matter.

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. 6A:9-17.5. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." Tenure of Sammons, 1972 S.L.D. 302, 321. As noted above, there can be no dispute that Stocker's actions in the incident this Board has reviewed fall far short of our expectations for appropriate teacher behavior. Thus, the Board agrees with the ALJ that the only proper response to Stocker's breach is revocation.

Accordingly, on this 1<sup>st</sup> day of April 2004, it is therefore ORDERED that the Initial Decision in this matter is hereby adopted. It is further ordered that Terry Stocker's Teacher of Elementary School, Teacher of Skilled Trades/Maintenance Mechanic and Teacher of Psychology certificates are hereby revoked on this date. It is further ORDERED that Terry Stocker return his certificates to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

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Joan E. Brady, Secretary  
State Board of Examiners

**Date of Mailing: April 28, 2004**

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