

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
DAVID TOLER : ORDER OF REVOCATION
_____ : DOCKET NO: EDE-5946-02

At its meeting of October 28, 2004, the State Board of Examiners reviewed a decision forwarded by the Office of Administrative Law (OAL) that had granted the Board of Examiners a summary decision revoking David Toler's teaching certificate. State Board of Examiners v. David Toler, OAL Docket No. EDE 5946-02 (September 23, 2004). Toler currently holds a Teacher of the Handicapped certificate issued in November 1986.

In December 1996, the State-Operated School District of the City of Newark (hereafter Newark) certified tenure charges against respondent, David Toler. Newark alleged that Toler had participated in a scheme to defraud the State Health Benefits Program (SHBP). Toler had allegedly provided a psychologist, Dr. Carl Lichtman, with personal information so that Lichtman could file a claim for psychological services he had purportedly provided to Toler. In fact, Lichtman had not treated Toler and was filing false claims. He would then give Toler a portion of the payment he had received on the false claims.

Toler did not respond to the tenure charges and asked that they be held in abeyance pending the outcome of a criminal proceeding against him arising out of the same conduct. In 1998, Toler resigned from his tenured position in Newark in exchange for entrance into a Pre-Trial Intervention Program (PTI). The Commissioner determined that Toler's tenure case was moot and referred the matter to the State Board of Examiners for any appropriate action regarding Toler's certificate.

Thereafter, on February 21, 2002, the State Board of Examiners issued Toler an Order to Show Cause as to why his certificate should not be suspended or revoked. The Order was

predicated on the charges of unbecoming conduct that had been alleged in the tenure and criminal proceedings.

The Board sent Toler the Order to Show Cause by regular and certified mail on April 8, 2002. The Order provided that Toler must file an Answer within 20 days. Toler filed his Answer on April 29, 2002. In his Answer, Toler admitted that the district had brought tenure charges against him and that the Commissioner had dismissed the tenure proceedings as moot. Toler also admitted that he had resigned from his tenured position as a condition for entry into PTI. (Answer, ¶¶ 1-4). In the remainder of his Answer, Toler denied that the Board of Examiners had just cause to suspend or revoke his certificate and requested a hearing on the matter.

Thereafter, on July 25, 2002, the Board of Examiners transmitted the matter to the Office of Administrative Law (OAL). After several adjournments, Administrative Law Judge (ALJ) Elinor Reiner scheduled a hearing for August 13, 2004. On June 24, 2004, the Board's counsel filed a motion for summary decision. Toler responded and on September 23, 2004, ALJ Reiner issued her Initial Decision in this matter granting the Board's motion for summary decision.

ALJ Reiner determined that summary decision was appropriate in this matter because, in a voluntary sworn statement, Toler admitted that he knew all about Lichtman's scheme and participated in it. (Initial Decision, slip op. at 3-4.) ALJ Reiner added that at his plea hearing, Toler admitted the truth of all the charges to which he pled guilty. (Initial Decision, slip op. at 4.) ALJ Reiner added that Toler did not dispute the facts of the case, but merely indicated that the criminal indictment was dismissed once he fulfilled his PTI conditions. (Initial Decision, slip op. at 6.) ALJ Reiner added that Toler did not specify any facts in dispute that would necessitate an evidentiary hearing. (Initial Decision, slip op. at 6.)

ALJ Reiner noted that Toler wanted a hearing so that he could present evidence that no one else had lost their teaching license for participating in Lichtman's scheme and that because

of his successful completion of PTI, he does not have a criminal conviction and therefore his guilty plea is not admissible in the case. (Initial Decision, slip op. at 6.) Toler also argued he should have a hearing on the revocation so that he could present mitigation and character witnesses. (Initial Decision, slip op. at 6.)

ALJ Reiner determined that the Board of Examiners had proven that the standard for summary decision was present in this case. She held that Toler never submitted any affidavit showing that not only was there a genuine issue of material fact but also that such issue could only be determined in an evidentiary proceeding. (Initial Decision, slip op. at 9.) Toler's failure to submit any facts which countered his involvement in the fraudulent scheme or any reasons why revocation was not warranted, convinced the ALJ that Toler did not adequately oppose the motion for summary decision. Moreover, ALJ Reiner found that the facts, which were undisputed in any meaningful manner, supported the Board's position that Toler committed the fraud and that such behavior warranted the revocation of his teaching certificate. (Initial Decision, slip op. at 9.) She also held that her determination was based on Toler's admissions under oath that he participated in the scheme and not on his criminal conviction or the fact that the crime would be a disqualifying offense pursuant to N.J.S.A. 18A:6-7.1 *et seq.* (Initial Decision, slip op. at 9-10.)

The ALJ added that she had no jurisdiction to decide Toler's claim that he knew of no other teacher who had lost a license for participating in this scheme and stated that his claim was irrelevant to the issue of whether his participation warranted the suspension or revocation of his certificate. Finally, the ALJ also stated that Toler's assertion that this fraud did not touch on his employment was both unsupported and inaccurate. ALJ Reiner reiterated the Board of Examiners' right to revoke a certificate where a teacher is engaged in criminal activity unrelated to the classroom. (Initial Decision, slip op. at 11-12.)

Based on all of her findings, ALJ Reiner concluded that summary decision was appropriate and that Toler had not presented any evidence to counter the facts in the Order to Show Cause. Consequently, she ordered that his Teacher of the Handicapped certificate should be revoked. (Initial Decision, slip op. at 12-13.)

At its meeting of October 28, 2004, the State Board of Examiners reviewed the ALJ's Initial Decision. The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter.

In rendering its decision, the State Board of Examiners first notes that notwithstanding Toler's contentions of rehabilitation, this is not the proper context for such considerations. The purpose of this proceeding is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation." See, In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners, 96 N.J.A.R. 2D (EDE) 1, 16 aff'd App. Div. Dkt. No. A-1246-96T5 (September 9, 1997) (citing In the Matter of the Revocation of the Teaching Certificate of James Noll, State Bd. of Examiners decision (February 7, 1990)). Thus, the fact that Toler has taught successfully since his offending conduct, while a step in the right direction, has no bearing on the decision the Board of Examiners must make with regard to his certification. Hence, the State Board of Examiners did not consider Toler's statements concerning his alleged rehabilitation, but instead focused on assessing whether his conduct regarding the insurance scheme constitutes conduct unbecoming a certificate holder. 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. 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 Bd. of Educ., 130

N.J.L. 369, 371 (Sup. 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. There can be no dispute that Toler’s participation in a scheme to defraud the State Health Benefits Program negates any claim he can have to being a role model for students.

Toler argues that he should retain his certificate since the incident occurred off school grounds. It is well-established that the State Board of Examiners has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom. See Cox v. State Bd. of Examiners, (App. Div. Docket No. A-3527-81T3) (November 18, 1983); State Bd. of Examiners v. Krupp, 3 N.J.A.R. 285 (1981).

Moreover, the Commissioner has long held that teachers serve as role models for their students. Therefore, a teacher’s whole life is subject to scrutiny, not just his actions within the schoolhouse doors:

[R]espondent’s argument that, because the occurrence happened in the evening away from school premises, both the Board and the Commissioner have no authority to act, is without merit. Individuals who must comport themselves as models for young minds to emulate choose the teaching profession. This heavy responsibility does not begin at 8:00 a.m. and conclude at 4:00 p.m., Monday through Friday, only when school is in session. Being a teacher requires, *inter alia*, a consistently intense dedication to civility and respect for people as human beings. The Commissioner has, on past occasions, determined tenure charges arising from incidents which happened in the evening both on and off school property. See, In the Matter of the Tenure Hearing of Thomas Appleby, Sch. Dist. of Vineland, Cumberland County, 1965 S.L.D. 159, aff'd State Board of Education 1970 S.L.D. 448; In the Matter of the Tenure Hearing of John H. Stokes, Sch. Dist. of the City of Rahway, Union County, 1971 S.L.D. 623.

[In the Matter of the Tenure Hearing of Robert H. Beam, 1973 S.L.D. 157, 163.] Toler therefore cannot exclude his “out-of-school” behavior from this tribunal’s examination.

After a thorough review of the record, including the exceptions the parties filed, the Board of Examiners affirms the ALJ's conclusion that Toler has not shown any evidence that he did not commit the offense in the Order to Show Cause.¹ To the contrary, he admitted this behavior in a sworn statement and in court. Therefore, the Board agrees with the ALJ that Toler's Teacher of the Handicapped certificate should be revoked.

Accordingly, it is on this 28th day of October 2004 ORDERED that the Initial Decision in this matter is hereby adopted. It is further ORDERED that David Toler's Teacher of the Handicapped certificate be revoked on this date and that Toler return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

Michael K. Klavon, Acting Secretary
State Board of Examiners

Date of Mailing: December 29, 2004

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

¹ In his exceptions, Toler attempted to present a newspaper article to demonstrate selective enforcement as well as a certification and letter from a supervisor to prove rehabilitation. As Toler did not attach any of these documents to his response to the Examiners' Motion for Summary Decision below, the Board of Examiners did not consider them during its deliberations in this matter. N.J.A.C. 1:1-18.4(c).