

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
SUSAN KANDELL : ORDER OF INTERLOCUTORY REVIEW  
\_\_\_\_\_ : DOCKET NO. EDE 09266-05

At its meeting of January 19, 2006, the State Board of Examiners reviewed a Motion for Interlocutory Relief received from the Deputy Attorney General (DAG) representing the Examiners in *In the Matter of the Certificates of Susan Kandell*, OAL Dkt No. EDE 09266-05. The DAG was seeking leave to challenge the Administrative Law Judge's (ALJ) ruling granting Kandell the right to depose the Examiner's witness, Cynthia Livengood, prior to the hearing in the case.

The case originated in November 2002, when the Board of Examiners issued an Order to Show Cause to Susan Kandell. The Order was predicated on allegations that Kandell, a principal in the State-Operated School District of the City of Newark, had retaliated against Cynthia Livengood, a teacher she was supervising in the provisional teacher program. Livengood alleged that Kandell became enraged when she asked for a transfer to another building. In addition, Livengood stated that after her transfer request, she was treated rudely and disrespectfully and was ignored when she asked for meetings to discuss her concerns. She also claimed that her signature was forged or a copy of it planted to make it appear as if she refused to sign her evaluation. Livengood also alleged that Kandell threatened her with a "disapproved" rating if she did not quit her job. Livengood did not quit her position and received an insufficient rating. Finally, Livengood claimed that Kandell did not perform her supervisory duties in a timely manner as she did not issue Livengood's 10-week provisional evaluation until May 14, 2002, although Livengood had been working since the start of the school year.

Kandell responded to the Order to Show Cause, denying the allegations and the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. After conducting preliminary discovery through the exchange of interrogatories, Kandell made a motion to compel Livengood's deposition. The ALJ granted this motion and scheduled Livengood's deposition for January 26, 2006. The hearing on the merits of the case was scheduled to commence on January 30, 2006. The DAG representing the Examiners then filed the Motion for Interlocutory Review, which Kandell opposed. The Examiners fully considered both submissions at its January 19, 2006, meeting and voted to grant the Motion for Interlocutory Review. The ALJ assigned to the case then adjourned the hearing.

The Examiners must now consider the merits of allowing Livengood's deposition to go forward. After considering the papers submitted by both parties in this matter, the Examiners hereby reverse the ALJ's order compelling Livengood's deposition. Simply stated, the Examiners cannot justify the grant of this extraordinary remedy in this case. Pursuant to *N.J.A.C. 1:1-10.2(c)*, depositions "are available only on motion for good cause." Kandell has made no compelling argument that she cannot solicit information from Livengood during the hearing itself, which was scheduled to commence only four days after the deposition. Indeed, Livengood is scheduled as a witness and will be present for the hearing. The hardship and expense of compelling her to appear from her home in Florida four days in advance of the hearing further militate against this unusual remedy. Moreover, as required by *N.J.A.C. 1:1-10.2*, there is no evidence that indicates that Kandell sought other, less intrusive methods of gathering the information she desires.

Accordingly, Susan Kandell's request to depose Cynthia Livengood is denied and it is on this 30<sup>th</sup> day of January 2006 ORDERED that ALJ Cohen's order granting such relief is reversed.

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Robert R. Higgins, Acting Secretary  
State Board of Examiners

Date of Mailing:

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Appeals may be made to the State Board of Education pursuant to the provisions of *N.J.A.C.* 6A:4-2.3.