

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
RITA O'MALLEY : ORDER OF REVOCATION
_____ : DOCKET NO: 1516-178

At its meeting of April 14, 2016, the State Board of Examiners (Board) reviewed information it received regarding Rita O'Malley. O'Malley was employed by the Woodbridge Township School District (Woodbridge). Pursuant to *N.J.A.C. 6A:9B-4.5*, the Commissioner of Education (Commissioner) referred to the Board the tenure matter captioned *In the Matter of the Tenure Hearing of Rita O'Malley*, Dkt. No. 358-11/15 (Commissioner's Decision, January 6, 2016).

Woodbridge certified tenure charges against O'Malley alleging unbecoming conduct. In the tenure charges, which are incorporated herein by reference, Woodbridge alleged that O'Malley had submitted inaccurate and potentially fraudulent student educational evaluation reports. According to Woodbridge, those reports were deficient because O'Malley had inserted false test scores for subtests that had not been administered, included incorrect test results for subtests that had been completed, misplaced or failed to complete protocols, prepared write-ups regarding subtests that were not administered, failed to include test results for subtests that were completed and failed to administer subtests and complete an educational evaluation report. O'Malley also allegedly submitted false mileage reimbursement vouchers and received monetary payment for funds to which she was not entitled.

O'Malley failed to respond to the charges against her and in his decision the Commissioner deemed the allegations to be admitted. He found that the charges of conduct unbecoming a teaching staff member had been proven and warranted O'Malley's dismissal from her tenured employment. The Commissioner granted summary decision to the district and dismissed O'Malley from her tenured position in Woodbridge. The Commissioner transmitted the matter to the Board for its review.

O'Malley currently holds a Teacher of Social Studies certificate, issued in February 1979, a Teacher of the Handicapped certificate, issued in July 1988 and a Learning Disabilities Teacher-Consultant certificate, issued in April 1995. After reviewing the above information, at its April 14, 2016 meeting, the Board voted to issue an Order to Show Cause (OSC) to O'Malley as to why his certificates should not be revoked.

The Board sent O'Malley the OSC by regular and certified mail on April 20, 2016. The OSC provided that O'Malley must file an Answer within 30 days. On May 13, 2016, O'Malley submitted an Answer. In that Answer, O'Malley denied the allegations in the tenure charges. O'Malley acknowledged that Woodbridge filed tenure charges but during the pendency of those charges she submitted a letter of resignation.

Since there were material facts in dispute, on July 20, 2016, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. On August 31, 2020, Administrative Law Judge (ALJ) Patricia M. Kerins issued an Initial Decision in the case. *In the Matter of the Certificates of Rita. O'Malley*, Dkt. No. EDE 10769-16 (Initial Decision, August 31, 2020).

After reviewing the record, ALJ Kerins found that the Board successfully demonstrated O'Malley failed to administer tests to students and her test scoring and evaluation reports contain discrepancies or other inaccuracies. (Initial Decision, slip op. at p.19). Further, the record demonstrated that O'Malley's conduct was not an isolated incident but more "a pattern of significant errors in the performance of her duties as an LDTC." *Id.* at p. 19-20. As a result of her findings, ALJ Kerins found that O'Malley had already been sanctioned for the conduct through loss of her tenured position and she demonstrated years of unblemished work as an LDTC. Accordingly, the appropriate penalty would be a three (3) year suspension along with "successful completion of an educational program on testing procedures and educational evaluations to be approved by petitioner." *Id.* at p. 20.

In the Exceptions, O'Malley argued that she "made mistakes along the way" but that the witnesses in this matter also made errors. (Exceptions at p. 3.) Additionally, she argued that there was no evidence that students were denied special education services as a result of the errors. *Id.* O'Malley states that the initial decision erred by "placing more credibility on Ms. Gricko's testimony." *Id.* at p. 5. She points to concerns regarding Gricko's testimony being based upon her knowledge as an LDTC rather than other authority. O'Malley then reviewed the testing issues for several students individually, noting in each instance whether she believed there was a discrepancy or typographical errors, the requirement/necessity for the test; O'Malley consistently argued that no student was denied special education services. *Id.* at p. 5-11. O'Malley admits to several of the errors, indicating in one instance that there was "sloppy work that probably should have been corrected when Respondent was reviewing her report." *Id.* at p. 8.

The DAG filed reply exceptions which argued that the ALJ's credibility assessments should not be disturbed and that the appropriate penalty in this matter is revocation. *Id.* at p. 2 and 5. The DAG argued that Gricko testified with consistency and that the ALJ found her testimony to be credible and found her to be knowledgeable, direct, and articulate. *Id.* at p. 4. Specifically, the ALJ did not find O'Malley to be credible because she was not confident in her command of the Woodcock-Johnson II tests and appeared confused at times when questioned. *Id.* at p. 4-5.

The DAG also argued that prior case law supports revocation in situations where a teacher submits fraudulent material and that O'Malley's conduct here is no less egregious. *Id.* at p. 6. Further, the DAG argued that O'Malley falsified learning-disabled student tests results and presented them to parents and teacher in her educational evaluations. *Id.* at p. 6. O'Malley's conduct "clearly demonstrate that Respondent neglected her duties and exhibited gross incompetence, thereby providing other just cause for the revocation of her certificates." *Id.* at p. 7.

The DAG further argued that O'Malley acknowledges many of her errors, omissions, and discrepancies but seeks that the Board overlook it because students were not denied special education services. *Id.* at p. 21. O'Malley's pattern of falsifying test results supports the finding of unbecoming conduct and revocation of her educator certificates. Moreover, O'Malley submitted fraudulent mileage reimbursement vouchers, and defrauded Woodbridge out of funds that could have been used for educational purposes.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of December 10, 2020, the Board reviewed the Initial Decision and the Exceptions and Reply Exceptions. After full and fair consideration of the Decision and submissions, the Board voted to adopt the Initial Decision, but modify the penalty in this matter.

The ultimate issue in this matter is the nature and degree of the unbecoming conduct. As noted above, ALJ Kerins found that O'Malley's conduct is unbecoming of a teacher, but she determined that in light of her loss of tenure and her prior good record, she should receive a suspension as opposed to a revocation.

After reviewing the entire record, the Board agrees with the ALJ's assessment regarding O'Malley's unbecoming conduct but disagrees with the appropriate resultant penalty. O'Malley's unbecoming conduct occurred several times and involved several students. O'Malley admits to many of the errors and omissions, in one instance indicating the errors were sloppy. Moreover, her testimony was found not to be credible as she appeared confused before the ALJ.

The Board does not find it is appropriate to mitigate the penalty because students were not denied special education services or that O'Malley lost her tenure, thus having been penalized for her unbecoming conduct by the employing district. O'Malley's failures are significant and pervasive; these errors were not isolated or limited but demonstrate a pattern of conduct that the Board finds to be egregious and careless, if not intentionally fraudulent. An LDTC bears great responsibility in ensuring an appropriate educational program for special education students. In light of that, O'Malley's failures here are so significant that the Board finds revocation to be the appropriate penalty.

Accordingly, on December 10, 2020, the Board voted to adopt the Initial Decision and ordered a six-month suspension of O'Malley's certificates. On this 22nd day of January 2021, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that Rita O'Malley's Teacher of Social Studies certificate, issued in February 1979, a Teacher of the Handicapped certificate, issued in July 1988 and a Learning Disabilities Teacher-Consultant certificate, issued in April 1995 are hereby REVOKED, effective immediately. It is further ordered that O'Malley return her certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

RS/KG/rg

Date of Mailing:

Via Certified and Regular Mail:

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.