

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
CHRISTOPHER FALEY : ORDER OF SUSPENSION
_____ : DOCKET NO: 1920-141

At its meeting of February 28, 2020, the State Board of Examiners (Board) reviewed information it received from the Livingston Board of Education (Livingston) regarding Christopher Faley. Faley was a former Learning Disabilities Teacher Consultant (LDTC) at Livingston. It was alleged that Faley resigned his position at Livingston as a result of allegations that he failed to appropriately test a special needs student. It was further alleged that Faley attempted to conceal his failure.

Faley currently holds a Teacher of Art Certificate of Eligibility with Advanced Standing, a Teacher of Elementary School in Grades K-6 Certificate of Eligibility with Advanced Standing, a Teacher of Students with Disabilities Certificate of Eligibility, a Teacher of Supplemental Instruction in Reading and Mathematics in Grades K-8 Certificate of Eligibility with Advanced Standing, a Teacher of Preschool through Grade 3 Certificate of Eligibility, a standard Teacher of Elementary School in Grades K-6 certificate, a standard Teacher of Art certificate, a standard Teacher of Supplemental Instruction in Reading and Mathematics in Grades K-8 certificate, a standard Teacher of Students with Disabilities certificate, and a standard Learning Disabilities Teacher Consultant certificate. After reviewing the above information, at its July 30, 2020 meeting, the Board voted to issue an Order to Show Cause (OSC) to Faley as to why his certificates should not be revoked.

On August 12, 2020, the Board sent Faley the OSC by regular and certified mail. The OSC provided that Faley must file an Answer within 30 days pursuant to *N.J.A.C. 6A:9B-4.6(b)*. On

August 27, 2020, Faley submitted an answer, wherein he admitted he resigned his position with Livingston but denied the remaining allegations. As there were material facts in dispute, on September 14, 2020, the Board transmitted the matter to the Office of Administrative Law (OAL) for a hearing.

The hearing in this matter was held on June 9 and 12, 2023. The record closed on March 26, 2024. On April 24, 2024, Administrative Law Judge (ALJ) Daniel Pasquale issued an Initial Decision in the case. *In the Matter of the Certificates of Christopher Faley*, OAL Dkt. No. EDE 08617-20 (Initial Decision, April 24, 2024).

After the hearing in this matter, the ALJ stated that the parties stipulated the following facts. In October 2019, Faley submitted an Educational Evaluation Report concerning Student A, age 8, third grade, indicating testing sessions with Student A were conducted on September 12, 13, 25 and 27, 2019, and October 2, 2019. *Id.* at 3. Student A was new to Livingston having previously attended school out of state, where he had an IEP. *Ibid.* On October 16, 2019, Faley submitted his report, but the testing record/protocols were not included. *Ibid.* Also on October 16, 2019, Dr. Blair Rosenthal, the Director of Special Education at Livingston, saw the protocols on Faley's desk and took pictures of the protocols. *Ibid.* On October 17, 2019, Dr. Rosenthal texted Faley requesting the protocols and Faley advised he submitted them in a separate envelope from the report. *Id.* at 4. Later that day, Faley resigned from his position at Livingston. *Ibid.*

After hearing testimony, the ALJ found the following additional facts. Faley began working as an LDTC with Livingston on September 1, 2021. *Ibid.* No one saw Faley pull Student A out of class for testing. *Ibid.* None of the witnesses knew of an appointment scheduled for the test of Student A and the one-to-one aides would have known since they were with Student A all day every day. *Id.* at 5-6. Based on these facts and the parties' stipulations, the ALJ found that

Faley did not administer the test to Student A. *Id.* at 7. ALJ further found that Faley did not even attempt to test Student A. *Id.* at 6. And there was no evidence that Faley did anything other than speak to Student A in the hallway. *Ibid.*

The ALJ found the witnesses who testified on behalf of the Board were professional and dispassionate; did not indicate a personal slant to malign Faley; and were clear, consistent, and credible. *Id.* at 6, 7. Further, the ALJ found that no witness “corroborates even a portion of Faley’s version of events with the exception of Ms. Jessica Cohen who grabbed the protocols for him to unwittingly cover his lack of testing upon [Faley’s] request.” *Id.* at 6. In contrast, the ALJ found that Faley’s explanation of his attempts to test Student A and using a form with inappropriate dates being due to a ministerial error were not plausible given he is the only individual whose certifications are at stake. *Id.* at 7. Further, there was no evidence to support his testimony that he was targeted by Livingston. *Id.* at 11.

The ALJ concluded that the Board proved that Faley’s failure to administer the test and the attempt to cover up that lack of testing is conduct unbecoming an educator. *Id.* at 7-8, 11. The ALJ further concluded this was an isolated event. *Id.* at 8. As to penalty, the ALJ found Faley’s conduct improper, that he lacked poor judgment, and he did not show remorse for his actions. The ALJ found as mitigating factors, Faley’s unblemished previous record, his above average evaluations, and the stress of being on the job for about a month. The ALJ concluded that the appropriate penalty was a one-year suspension of his certificates. *Id.* at 11-14.

Faley filed Exceptions, arguing that the critical error to the ALJ’s decision is that the penalty is too severe in light of the findings of fact and mitigating factors. *See* Respondent’s Exceptions, p. 1. Specifically, Faley argues that the decision suspends all of his certificates despite the conduct relating only to his LDTC certificate. *Id.* at 1-2. Faley also argues that there is no

evidence to support that he is unfit to discharge the duties and functions of other positions within the school. *Id.* at 2. Further, Faley argues that the ALJ's findings regarding mitigation evidence further supports that Faley's other certifications – other than his LDTC certificate – should not be suspended or revoked. *Id.* at 2. Lastly, Faley argues that this isolated incident does not merit suspending the certificates he was not working under at the time of the isolated incident. *Id.* at 3.

The Deputy Attorney General (DAG) representing the Board also filed Exceptions which argue that Faley's unbecoming conduct in this matter warrants more than a one-year suspension. *See* Petitioner's Exceptions at p. 2. Specifically, the DAG argues that Faley's actions are more than merely failing to appropriately and timely test a student for special education and related services. *Ibid.* Rather, Faley repeatedly lied about administering the test, attempted to conceal the testing protocols, entered fraudulent and misleading information in the student's protocols, and knowingly submitted inaccurate test results. *Id.* at 2-3. The DAG also argues that the ALJ's finding as to mitigation should be rejected in light of the weight of credible evidence introduced at the hearing. *Id.* at 5. The DAG argues that relevant caselaw supports a more severe penalty in this case. *Id.* at 7, citing In re Certificates of O'Mally, 2023 WL 6545409 (App. Div., October 6, 2023). The DAG also argues that the ALJ's reliance on the Cooper case is misplaced because her conduct was a one-time incident brought on by severe stress and personal loss, which mitigation was not present in this matter. *Id.* at 11, citing In re Certificates of Cooper, EDE 06784-13, State Bd. of Exam'rs (March 12, 2015).

The Board must now determine whether to adopt, modify, or reject the Initial Decision in this matter. At its meeting of May 23, 2024, the Board reviewed the Initial Decision and the Exceptions filed by both parties. After full and fair consideration of the Initial Decision and submissions, the Board voted to adopt the Initial Decision.

The Board, in reviewing the matter, does not find that the ALJ's findings to be arbitrary or not based on sufficient credible evidence. The ALJ's credibility determinations were well supported and based on her first-hand observations. Accordingly, the Board is constrained by the ALJ's findings of facts and credibility determinations in this matter. The Board does not find a sufficient basis by which it could overturn same. *N.J.A.C.* 1:1-18.6(b).

The Board's long-standing belief is that teachers must serve as role models for their students. "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. A "violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct" may provide the basis for a finding of unbecoming conduct. *Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4, 14 (2017) (quoting *Karins v. City of Atlantic City*, 152 N.J. 532, 555 (1998)) (internal quotation marks omitted). The "elastic" concept of "conduct unbecoming" includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for . . . [public] employees and confidence in the operation of [public] services." *In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960) (internal quotations and citations omitted); *see also Bound Brook Bd. of Educ.*, 228 N.J. at 13.

As noted above, after reviewing the record, the ALJ made findings of fact based on her credibility determinations and concluded that Faley committed conduct unbecoming an educator when he failed to administer the appropriate test and then took actions to conceal his failure. In this case, Faley's conduct was certainly unacceptable and certainly unbecoming of a teacher. The Board agrees that Faley's conduct has the tendency to destroy public respect for school

administrators and confidence in the operation of public schools. Thus, the Board finds Faley engaged in unbecoming conduct.

As to penalty, the ALJ determined that a one-year suspension was appropriate in this case in light of the specific mitigating factors. The Board agrees with the ALJ's determination and assessment of the mitigating factors here. The Board further agrees that this matter is more akin to the facts, circumstances and mitigation in the Cooper case, where a LDTC teacher was found to have committed an isolated incident of fabricating a student's Alternate Proficiency Assessment, mitigating factors of an unblemished record and an enormity of personal stress on Copper at the time were found, warranting the Board to issue a two-year suspension of her certificates. Cooper, EDE 06784-13, State Bd. of Exam'rs. Moreover, the Board disagrees that the O'Malley case is more similar to the facts found here. In O'Malley, the LDTC teacher was found to have engaged in a pattern of incidents, in failing to test eleven different students on separate occasions, and no mitigating factors such as personal stress or showing remorse for her actions were found, warranting the Board to revoke her certificates. O'Mally, 2023 WL 6545409.

Here, the Board finds that a one-year suspension is warranted for Faley's breach relating to a critical report that determines whether a student receives special education services and then attempting to cover it up. Faley claims that only his LDTC certificate should be affected based on his conduct. However, the Board does not find compelling evidence warranting only action against his LDTC certificate when his conduct of concealing his failure in his position applies to his character as a teacher in general. Thus, the Board rejects Faley's argument and finds that a suspension of all of his certificates is appropriate based on his conduct.

Accordingly, on May 23, 2024, the Board voted to adopt the Initial Decision and ordered a one-year suspension of Faley's certificates from the date of this Decision. On this 27th day of

June, 2024, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that Christopher Faley's Teacher of Art Certificate of Eligibility with Advanced Standing, Teacher of Elementary School in Grades K-6 Certificate of Eligibility with Advanced Standing, Teacher of Students with Disabilities Certificate of Eligibility, Teacher of Supplemental Instruction in Reading and Mathematics in Grades K-8 Certificate of Eligibility with Advanced Standing, Teacher of Preschool through Grade 3 Certificate of Eligibility, Teacher of Elementary School in Grades K-6 certificate, Teacher of Art certificate, Teacher of Supplemental Instruction in Reading and Mathematics in Grades K-8 certificate, Teacher of Students with Disabilities certificate, and Learning Disabilities Teacher Consultant certificate are hereby SUSPENDED for a period of one year, effective immediately. It is further ordered that Faley 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

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.