

SB #89-98
App. Div. #A-2692-99T1
SBE #574-09/99-260

IN THE MATTER OF THE FINAL GRANT :
OF A CHARTER FOR THE ENGLEWOOD : STATE BOARD OF EDUCATION
ON THE PALISADES CHARTER SCHOOL, : DECISION
BERGEN COUNTY. :

Decided by the Commissioner of Education, September 16, 1998

Remanded by the State Board of Education, December 2, 1998

Decision on remand by the Commissioner of Education, December 14, 1998

Decision by the State Board of Education, March 17, 1999

Remanded by the State Board of Education, June 2, 1999

Decision on remand by the State Board of Examiners, September 24, 1999

Decision on remand by the Commissioner of Education, November 17, 1999

Remanded by the State Board of Education, December 1, 1999

Decided by the Appellate Division, May 23, 2001

Decision on remand by the State Board of Examiners, October 1, 2001

For the Appellant, Mauro, Savo, Camerino & Grant (Eric Martin Bernstein,
Esq., of Counsel)

For the Respondent Englewood on the Palisades Charter School, Carpenter,
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For the Respondent Dana D. Clark, Dana D. Clark, pro se

For the Participant Commissioner of Education, Michelle Miller, Deputy
Attorney General (Peter C. Harvey, Acting Attorney General of New
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The protracted proceedings in this matter had their genesis in an appeal filed with the State Board of Education pursuant to N.J.S.A. 18A:36A-4(d) by the Board of Education of the City of Englewood. That appeal challenged the final approval granted to the Englewood on the Palisades Charter School by the Commissioner of Education pursuant to N.J.S.A. 18A:36A-1 et seq. on September 16, 1998.

In a decision issued on December 2, 1998, the State Board found that it could not decide the appeal because the record failed to reflect that the Commissioner had reviewed the racial composition of the school before granting final approval and failed to demonstrate that the teaching staff employed by the Charter School was properly certified as required by the Charter School Program Act, N.J.S.A. 18A:36A-1 et seq. The State Board had become concerned about this issue because the documentation submitted by the Charter School showed that it employed only one individual as a classroom teacher and that this individual, Dana D. Clark, was a participant in the alternate route teacher preparation program who did not possess standard certification. Our concerns were heightened by the fact that the record indicated that Ms. Clark possessed only a "certificate of eligibility," which only authorized her to seek employment, and that she did not possess the provisional certification required in order for her to be authorized to serve as a teacher.

To address its concerns regarding the Commissioner's review of the racial composition of the Charter School, the State Board directed the Commissioner to provide it with a written assessment of the Charter School's racial composition and its potential long-term impact on the school district. To resolve whether the Charter School

had employed a properly certified teaching staff, the State Board remanded the matter to the Commissioner with the direction that he determine whether Dana Clark was in fact the only individual employed as a teacher by the Charter School and whether she and any other individuals serving as classroom teachers possessed certification that was appropriate to authorize them to fulfill the responsibilities attending their positions.

On December 14, 1998, the Commissioner rendered his decision on remand. That decision confirmed that Ms. Clark was, in fact, the only teacher who had been employed by the Charter School. The Commissioner found that Ms. Clark possessed a provisional certificate authorizing her to serve as a teacher, but he made this determination without reference to the structure of the Charter School and the specific educational program it was offering. Consequently, he did not consider in this context whether provisional certification was appropriate to authorize Ms. Clark to serve as a teacher given that she was the only one employed in that capacity. In addition, the Commissioner's decision on remand revealed that Ms. Clark had not been issued a provisional certificate until December 1998. Consequently, prior to that time, she was serving as a teacher while possessing only a "certificate of eligibility."

In a decision issued on March 17, 1999, the State Board found that it was still unable to determine whether the approval granted to the Charter School by the Commissioner should be affirmed because it still could not ascertain whether the Charter School was fulfilling its statutory obligations with respect to certification requirements. In particular, the State Board was not able to determine whether the provisional teacher training program implemented by the Charter School complied with the applicable regulations, N.J.A.C. 6:11-5.3. The State Board found that such

compliance was critical given that Ms. Clark was the only individual employed by the Charter School as a teacher. Therefore, the State Board directed that the Charter School supplement the record with information regarding its training program.

After reviewing the supplemental material submitted by the Charter School, the State Board issued another decision on June 2, 1999, finding that the Charter School was not operating in compliance with statutory certification requirements. In that it appeared that the Charter School had not employed even one staff member who possessed standard certification, and given the import of failing to employ properly certified staff, the State Board placed the Charter School on probation and directed it to submit a remedial plan to the Commissioner within 30 days. In addition, the State Board found that the provisional teacher training program which the Charter School was providing for Ms. Clark did not comport with the regulatory requirements that were prerequisite to the ultimate issuance of a standard instructional certificate by the State Board of Examiners. Given the Board of Examiners' statutory responsibility for issuing certificates in the first instance, the State Board of Education remanded the issues relating to adequacy of Ms. Clark's alternate route program to the Board of Examiners for review. However, the State Board of Education retained jurisdiction over the matter.

On September 24, 1999, the Board of Examiners transmitted its conclusions to the State Board of Education, together with the documents upon which those conclusions were based. In an accompanying memorandum, the Secretary of the Board of Examiners indicated that Ms. Clark had been issued a standard instructional certificate with an elementary endorsement in June 1999 and that the Board of Examiners had voted to take no action to revoke her certification despite the regulatory

deficiencies in the provisional training program provided to her by the Charter School. The Board of Examiners' determination to take no action was based on the fact that the circumstances of the Charter School were outside of Ms. Clark's control and its conclusion that she had substantially complied with the requirements of the regulations governing provisional teachers.

On December 1, 1999, the State Board of Education rendered its fourth decision in the matter. In that decision, the State Board reviewed the Commissioner's report as to the Charter School's remedial plan and accepted his recommendation to grant it final approval. However, the State Board further concluded that it was compelled to remand the issues relating to Ms. Clark's certification to the State Board of Examiners once again. The State Board of Education explained that:

We have carefully reviewed the transmittal memorandum and the supporting documents provided to us by the State Board of Examiners. Because neither the transmittal memorandum nor the supporting documentation reflects that the Board of Examiners fulfilled the terms of our June 2 remand, and because only partial documentation has been provided to us, we again remand this aspect of the matter to the Board of Examiners. In doing so, we stress that the review directed by our June 2 decision was not merely of "Dana Clark's completion of the Provisional Teacher Program." Rather, as set forth in our decision, we contemplated that the Board of Examiners would review each aspect of Ms. Clark's program against the applicable regulatory requirement, identify any deficiencies that had resulted in her program and, on that basis, ascertain whether anything further was required in order for her to satisfy the regulatory requirements.

Specifically, in our decision of June 2, we found on the basis of the record before us that Ms. Clark had been given full responsibility for the school's only classroom in September 1998, despite the fact that she did not complete Phase I of her provisional training program – which requires that a provisional teacher attend "[a] full-time

seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom” – until February 1999. N.J.A.C. 6:11-5.3(f)1. The record further indicated that Ms. Clark did not even receive her provisional certificate from the Board of Examiners until December 1998 and that her service prior to that time was under a certificate of eligibility, which did not entitle her to assume responsibility for a job assignment. N.J.A.C. 6:11-4.4(a).

In addition, we found that Ms. Clark’s program had failed to comply with N.J.A.C. 6:11-5.3(f)2, which requires a “period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least 10 weeks. During this time, the provisional teacher shall be visited and critiqued no less than one time every two weeks by members of a Professional Support Team....” The record indicated that Ms. Clark’s mentor teacher had visited her classroom just four times from the beginning of the school year through January 1999. The record further revealed that Ms. Clark’s first formal evaluation, as required by N.J.A.C. 6:11-5.3(f)2, was conducted by the school’s headmaster, who did not possess certification that would authorize her to evaluate staff. See N.J.A.C. 6:11-9.3; N.J.A.C. 6:11-5.4(a); N.J.A.C. 6:11-5.3(f)2. Moreover, the headmaster was the only support team member who participated in that evaluation, despite the requirement that such evaluations “shall be shared by at least two, but no more than three members of the Support Team.” N.J.A.C. 6:11-5.4(b).

In light of the seriousness of our concerns, we directed the State Board of Examiners to review Ms. Clark’s provisional teacher training program in the context of the particular circumstances presented. Again, the purpose of such directive was to enable the Board of Examiners to ascertain what was necessary in order for the training ultimately received by this provisional teacher to meet regulatory standards.

State Board of Education’s Decision of December 1, 1999, slip op. at 5-7.

The State Board retained jurisdiction over the issue of Clark's certification.¹

In a decision rendered on October 1, 2001 and mailed on March 21, 2002, the State Board of Examiners determined that Ms. Clark's instructional certification had been issued appropriately. In the Matter of the Certificate of Dana Clark, decided by the State Board of Examiners, October 1, 2001. In so doing, the Board of Examiners reviewed documents, including performance evaluations, prepared during the 1999-2000 and 2000-01 school years, subsequent to its issuance of a standard certificate to Ms. Clark, and concluded that:

....over the last two years Clark has had been properly supervised and had excellent evaluations consistent with the requirements of the Provisional Teacher Program/Alternate Route. N.J.A.C. 6:11-5.3. All of Clark's numerous evaluations have been conducted by an appropriately certified individual, N.J.A.C. 6:11-5.3(f), and she has fulfilled all three phases of her training as provided in N.J.A.C. 6:11-5.3(f)1-3. She has also attended the 200 hours of formal instruction mandated of all provisional teacher candidates who possess a Certificate of Eligibility. N.J.A.C. 6:11-5.3(g).

Furthermore, the Board of Examiners wants to reiterate that as the only administrative body authorized to issue and revoke teacher certificates, it originally made the determination that Clark was properly certified because the errors in oversight she experienced in her first provisional year were not of her doing or to her knowledge. Notwithstanding the State Board's contention that Clarks' initial provisional year was so fundamentally flawed as to negate the validity of her credential, she has subsequently fulfilled all requirements of the Provisional Teacher Program. Thus, even assuming arguendo that the Board of Examiners'

¹ This decision marks the point at which the issues pertaining to the Charter School diverged from the issue of Clark's certification. On May 23, 2001, the Appellate Division affirmed our determination to grant final approval to the Charter School and remanded on the issue of Clark's certification, observing that the State Board had retained jurisdiction over that issue and that the Board of Examiners had not yet issued a decision on remand. In the Matter of the Final Grant of a Charter to Englewood on the Palisades Charter School, Docket #A-2692-99T1 (App. Div. 2001).

initial determination was in error, it now finds that the appropriateness of Clark's certificate issuance is beyond question.

Id., slip op. at 2-3.

Consistent with our statutory responsibilities and our obligations as head of the Department of Education, we have reviewed the decision issued by the State Board of Examiners with utmost care. In this respect, we remind the Board of Examiners that, although it is charged with the responsibility for issuing and revoking certificates in the first instance, it does so under rules adopted by the State Board of Education. N.J.S.A. 18A:6-38. Furthermore, it is well established that the State Board of Education, as the statutory head of the Department of Education, N.J.S.A. 18A:4-1, is the ultimate administrative decision-maker in matters arising under the school laws. Matter of Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), certif. denied, 121 N.J. 615 (1990); Dore v. Board of Educ., 185 N.J. Super. 447, 452 (App. Div. 1982). Accordingly, not only is the Board of Examiners required to act in accordance with the rules and regulations we have adopted to govern the issuance, revocation and suspension of certificates, N.J.A.C. 6:11-2.2, but all final decisions made by the State Board of Examiners with respect thereto are appealable to the State Board of Education, and the Board of Examiners is bound by our decisions.

We turn now to the substantive questions presented by this matter. Pursuant to our retention of jurisdiction, we have reviewed the record certified to us by the Board of Examiners with great care.² Based on that review, we reverse the Board of Examiners'

² We note that the record certified to us by a Deputy Attorney General on behalf of the State Board of Examiners does not include the record on which we had based our previous determinations in this matter.

determination that Ms. Clark's instructional certificate was issued appropriately. Quite simply, as the record clearly demonstrates, Ms. Clark was not eligible for a standard certificate at the time the Board of Examiners issued her an instructional certificate in June 1999.

Initially, the Board of Examiners' characterization of Ms. Clark's service in 1998-99 as a "first" or "initial" provisional year is incorrect. As defined in our regulations, a provisional certificate is a "temporary one-year certificate issued to candidates who have met the requirements for initial employment as part of a State-approved district training program or residency leading to standard certification." N.J.A.C. 6:11-4.2. Although the regulations do not preclude the Board of Examiners from issuing another provisional certificate to an individual in a subsequent year, they do not authorize service under a provisional certificate beyond the one-year period for which a given provisional certificate was issued. Hence, the 1998-99 school year was the only school year for which Ms. Clark's provisional certificate was valid. Given that fact, the standard certificate issued to her by the Board of Examiners in June 1999 was the only certification that she possessed in the 1999-2000 school year and thereafter. Consequently, contrary to the Board of Examiners' view, Ms. Clark's service was under a standard certificate after the 1998-99 school year.

Rather, it includes only those documents which were reviewed by the Board of Examiners during this latest remand.

We note in addition that, given the procedural posture of this matter, which involved a challenge to the Commissioner's approval of the Charter School's application, Ms. Clark has never participated as a party in these proceedings. However, since the validity of her teaching certificate is at issue, Clark must be considered to be a party, and we provided her, the Charter School and the Commissioner of Education, who was granted participant status, with the opportunity to submit briefs in response to the Board of Examiners' decision. No briefs were submitted.

Since teaching staff members who serve under a standard certificate are not subject to the regulatory requirements that apply to alternate route teachers during their provisional year, it is critical that a candidate meet all of the regulatory requirements of the alternate route program before the Board of Examiners issues a standard certificate to that individual. That being the case, we do not agree with the Board of Examiners that “the appropriateness of Clark’s certificate issuance is beyond question.” Our regulations are clear and unambiguous in predicating a provisional teacher’s eligibility for a standard teaching certificate on fulfillment of the precise requirements of the regulations governing provisional teachers. N.J.A.C. 6:11-5.2 See In the Matter of the Issuance of a Teaching Certificate to Linda J. Avellino, decided by the State Board of Education, March 7, 2001 (State Board of Education affirmed Board of Examiners’ determination to deny issuance of standard certificate to provisional teacher, agreeing that after-school enrichment program run by the district board “did not constitute substantial compliance with the intensive provisional teacher training program contemplated by the regulations for alternate route candidates”). One of those requirements is that, in addition to possessing a provisional certificate, the candidate must have completed a State-approved training program in order to be eligible for a standard certificate. In this instance, Ms. Clark had not completed such a program in June 1999 when the Board of Examiners issued her a standard certificate. Hence, its issuance was not appropriate.

Ordinarily, such a failure to comply with regulatory requirements would call for revocation of an individual’s certification. See Avellino, supra. However, this situation presents us with very unique circumstances. The litigation was initiated as an appeal to

the grant of approval to a charter school and not as a challenge to Ms. Clark's certification. Hence, Ms. Clark did not have notice that there was any question concerning the propriety of the issuance of her standard certificate. The situation was compounded by the Board of Examiners' failure to fulfill the terms of our remands of June 2, 1999 and December 1, 1999. If the Board of Examiners had done so, the deficiencies in Ms. Clark's alternate route program could have been corrected. The fact that the Board of Examiners did not examine the alternate route program that had been provided to Ms. Clark in light of the regulatory requirements, in effect, deprived her of any meaningful opportunity to correct the deficiencies in her program. Given the length of time that has passed since Ms. Clark completed her provisional year and given that she has been teaching during this period, another remand would be counterproductive. Rather, at this point it is more appropriate for us to examine the record and resolve the matter.

Ms. Clark now has been teaching for nearly five years. The record certified to us during the course of these proceedings shows that she successfully completed the 200 hours of formal instruction required of provisional teachers. Although she was never provided with the mentoring and on-the-job supervision required for alternate route teachers, N.J.A.C. 6:11-5.3, and was not evaluated in compliance with N.J.A.C. 6:11-5.4, because of the singular circumstances of this matter, Ms. Clark was given the opportunity to demonstrate her capabilities as a teacher in such manner as to permit us to assess them. The record shows that Ms. Clark received exemplary performance evaluations from a certified administrator during the 1999-2000 and 2000-01 school years. She was rated as satisfactory in all performance categories, and the evaluator

observed that she “has developed into an excellent role model and teacher.” He further indicated that Ms. Clark was “a dedicated teacher” who “keeps student interest high....She makes students feel they can learn.” She was described as “[a]n asset to our school.” Under the circumstances, we find that it would serve no purpose to require Ms. Clark to undergo a training program designed for alternate route teachers during their provisional year. Nor is revocation of her certificate warranted.

However, we cannot ignore the fact that the scenario presented by this case should never have occurred. Given the litany of deficiencies that we have identified in Ms. Clark’s training program, it is evident that the State Board of Examiners acted contrary to the language and intent of the certification regulations when it issued her a standard certificate in June 1999. The fact that the “errors in oversight” that occurred during the provisional year were “not of [Clark’s] doing or to her knowledge” did not provide justification for the Board of Examiners to issue a standard certificate to a provisional teacher whose training program did not even minimally satisfy the regulatory requirements. Furthermore, as the ALJ pointed out in Avellino, ultimately it is the responsibility of the provisional teacher to ensure that his or her experience satisfies the regulatory requirements. We reiterate in that regard that:

....the alternate route program was intended to be “stringent.” 16 N.J.R. 1647. Whether Ms. Clark was aware of the circumstances outlined in our previous decision, including the adequacy of her supervisor’s certification, may be relevant in determining the appropriateness of permitting her to remediate the situation. However, such circumstances cannot be determinative of the sufficiency of her preparation to teach. As the Commissioner of Education has stressed under similar circumstances, “the State’s interest in licensing only teachers who have fully met...requirements cannot be thwarted by circumstances such as those herein.” LaRosa v. John Ellis, et al., 93

N.J.A.R.2d (EDU), 459, 461. This is because “[u]nqualified teachers, just like unqualified surgeons, should not be licensed to practice under any condition.” Id., Initial Decision, at 460.

State Board of Education’s Decision of December 1, 1999, slip op. at 7-8.

Accordingly, we remind the State Board of Examiners that a standard certificate must not be issued to a provisional teacher unless he or she has demonstrated compliance with the regulatory requirements, and, in light of the concerns raised by this case, we are compelled to admonish the Board of Examiners to exercise greater care with respect to its obligations in this regard.

April 2, 2003

Date of mailing _____