

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
GERARD BATTLE : ORDER OF REVOCATION
_____ : DOCKET NO: 510-02/99-198

At its meeting of February 25, 1999, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Gerard Battle from his tenured position with the State-Operated School District of the City of Jersey City for inefficiency and incapacity. Battle currently holds a Teacher of the Handicapped certificate.

This case originated on August 28, 1998 when the State-Operated School District of the City of Jersey City certified tenure charges against respondent, Gerard Battle. The district charged Battle with inefficiency and incapacity. The Commissioner directed Battle, both through regular and certified mail, to respond to the charges within 15 days. Since Battle did not respond to the charges, the Commissioner deemed them admitted and decided the matter on a summary basis pursuant to N.J.A.C. 6:24-1.4(e).

The Commissioner found that Battle had failed to demonstrate proficiency in his area of teaching (special education); did not adequately assess his students' needs or evaluate their progress; did not maintain proper control of the class; had failed to employ effective organization; and did not utilize effective teaching techniques. The Commissioner also found that Battle had failed to remedy these inefficiencies despite being given a 90-day improvement period. The Commissioner determined that Battle's actions, as outlined by the district, constituted inefficiency and incapacity and warranted his dismissal from his tenured position. Accordingly, on September 29, 1998, the

Commissioner granted summary decision to the district and dismissed Battle from his tenured position there. The Commissioner also transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Battle's certificate.

Thereafter, on February 25, 1999, the State Board of Examiners issued an Order to Show Cause to Battle as to why his certificate should not be or suspended or revoked. The Order was predicated on the charges of inefficiency and incapacity that had been proven in the tenure hearing.

The Order to Show Cause was mailed to Respondent by regular and certified mail on March 14, 1999. The Order provided that if respondent desired to file an Answer to the Order that Answer must be filed within twenty (20) days. Battle filed an Answer on April 6, 1999. In his Answer Battle admitted that the district had brought tenure charges against him and that those charges went unanswered. He also admitted that the Commissioner had decided the case on a summary basis and had dismissed Battle from his tenured employment. (Answer, ¶¶ 2-5). In the remainder of his Answer, Battle added that the Board of Examiners had no basis to revoke or suspend his certificate since inefficiency and incapacity were not sufficient reasons to do so.

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on May 6, 1999, Battle was sent a hearing notice was mailed by regular and certified mail. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, respondent was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct that provided a basis for action against his certificate. It also explained that, upon review of the charges against him and

the legal arguments tendered in his defense, the State Board of Examiners would determine if such action was warranted. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Battle responded to the Hearing Notice on May 26, 1999. In that response, he claimed that there would be no purpose served by revoking or suspending his certificate. Battle argued that he should be given the opportunity to work in another district where they might feel he was an excellent teacher. He also stated that he had performed satisfactorily in all his years as a teacher in Jersey City, but for the last two. (Hearing Response, pp. 2-3). Battle reiterated that since he had defaulted in the tenure proceeding, there were no proofs offered as to whether or not the charges were sufficient to warrant dismissal. He did concede, however, that since one must assume the charges were sufficient, dismissal was appropriate. (Hearing Response, p. 4). He argued though, that that did not necessarily mean that revocation should follow. Indeed, Battle suggested that the standard for revocation was higher than that for dismissal since “[o]therwise every dismissal would result in the loss of a license to teach.” (Hearing Response, pp. 4-5). Battle then went through each of the tenure allegations and recounted the different ratings he had received on each of the factors. (Hearing Response, pp. 5-7). Finally, Battle renewed his contention that a higher standard should be applied in this matter and that there was no underlying proof upon which the Board of Examiners could rely in reaching its determination here. (Hearing Response, pp. 7-8).

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Battle’s conduct and his subsequent loss of tenure constitute sufficient predicates for the suspension or revocation of his certificate. At its meeting of

September 23, 1999, the State Board of Examiners reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After reviewing Battle's response, the Board of Examiners determined that no material facts related to his offense were in dispute since he had admitted all of the charges. Thus, since Battle has not denied the charges in the Order to Show Cause, his inefficiency and incapacity have been established.

The State Board of Examiners must now determine whether Battle's inefficiency and incapacity, as set forth in the Order to Show Cause, represent just cause to act against his certificates pursuant to N.J.A.C. 6:11-3.6(a)1. After an independent review of the facts as found in the tenure hearing, we find that they do.

As Battle himself admits, among other reasons, the State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, or incapacity. N.J.A.C. 6:11-3.4. In this instance, Battle agrees that he did not challenge the tenure charges that led to his loss of tenure. Instead, he has attempted, inappropriately, to litigate that case here. He is, however, precluded from doing so by the principles of collateral estoppel. See T.W. v. A.W., 224 N.J. Super. 675 (App. Div. 1988). Indeed, the Board of Examiners' focus is on a narrow legal issue: whether Battle's conduct supports one of the regulatory grounds for the revocation or suspension of certificates.

At this time, the State Board of Examiners must articulate once and for all that the standard for the suspension or revocation of a teaching certificate, although not the same as that used for tenure decisions, is just as exacting. It is a standard that differs only in scope, not depth. In other words, this Board's decisions regarding the loss of a certificate

cannot be held to a more stringent standard than those of the Commissioner regarding the loss of tenure. Rather, the Board of Examiners' view is more "global" than local since it must make its decisions in the context of removing a teacher from all classrooms in the state and not just one district. See In the Matter of the Revocation of the License of Polk, 90 N.J. 550 (1982)(evidentiary standard to be used in an administrative proceeding regarding the revocation or suspension of a professional license is a fair preponderance of the evidence and not a higher standard.)

In that vein, this Board must now determine whether Battle should be allowed to teach in any classroom in this State. It agrees with him that that requires more than a cursory look at his underlying tenure case. Moreover, it rejects his implication that the Board of Examiners would ever "rubber-stamp" any decision as a justification for its own actions. This Board conducts its own independent review of the facts and thereafter renders an independent judgment. The ultimate responsibility for safeguarding all of New Jersey's public school children rests with the Board of Examiners and it takes that responsibility seriously. Furthermore, it must maintain the high standards of the teaching profession.

It is that acknowledgment of its duty that compels this Board to keep incompetent teachers like Battle out of all our State's classrooms. After its review of the record in this case, this Board cannot help but conclude that Battle's incompetence and inefficiency render him unfit to serve the children of New Jersey in a teaching capacity any longer. In fact, Battle's failure to respond to the tenure charges does not bolster his credibility when he claims that he is neither incompetent nor inefficient. Rather, all indicators in this case

point to a teacher who should no longer be teaching. Thus, based on the facts here, the Board of Examiners believes that the appropriate sanction is revocation.

Accordingly, it is therefore ORDERED that Gerard Battle's Teacher of the Handicapped certificate be revoked on this 23rd day of September 1999. It is further ORDERED that Battle return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: November 9, 1999

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

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