

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
PATRICIA FAIRBANKS : ORDER OF SUSPENSION
_____ : DOCKET NO: 0405-117

At its meeting of September 23, 2004, the State Board of Examiners reviewed information received from the Division of Youth and Family Services (DYFS) regarding Patricia Fairbanks. DYFS had issued a report substantiating charges of neglect against Fairbanks. Fairbanks was the principal of an elementary school in East Orange. T.P., then a first-grade student, had an asthma attack and Fairbanks drove her to her baby sitter's house. Fairbanks left T.P. at the babysitter's apartment building without assuring that the babysitter was home. The baby sitter was not at home and T.P.'s asthma worsened. A relative found her walking a few blocks away and took her to another relative's home. T.P.'s asthma attack ultimately required her to be hospitalized for two days. Fairbanks currently holds a Teacher of Elementary School certificate, issued in June 1970, and Supervisor and Principal/Supervisor certificates, both issued in August 1975. Upon review of the above information, at its September 23, 2004 meeting, the State Board of Examiners voted to issue Fairbanks an Order to Show Cause.

The Board sent Fairbanks the Order to Show Cause by regular and certified mail on January 13, 2005. The Order provided that Fairbanks' Answer was due within 30 days. Fairbanks filed her response on February 11, 2005. In that Answer, she admitted that DYFS substantiated a finding of neglect in its report and that she left T.P. at her babysitter's apartment building without verifying that the babysitter was home. (Answer, ¶¶ 2, 3). Fairbanks also admitted that a relative discovered T.P. a few blocks away from her babysitter's home and that she had to be hospitalized for two days following the incident. (Answer, ¶¶ 4, 5). Fairbanks denied that T.P. was suffering from an asthma attack at the time she dropped her off at the

babysitter's apartment building. (Answer, ¶¶ 3). Fairbanks also denied that the Board had cause to revoke or suspend her certificates for one incident after 30 years of distinguished service to the district. (Answer, ¶ 6). She asserted that she acted in good faith at all times and without fraud or malice. (Answer, Second Affirmative Defense). Finally, Fairbanks claimed that her successful completion in a Pre-Trial Intervention program precluded the Board from taking any action against her certificates. (Answer, Third Affirmative Defense). Upon receipt of Fairbanks' Answer, the Board transmitted the matter to the Office of Administrative Law (OAL).

Administrative Law Judge (ALJ) Maria Mancini La Fiandra heard testimony on March 6, 2006. After accepting post-hearing submissions, ALJ La Fiandra closed the record and issued an Initial Decision on June 5, 2006. *In the Matter of the Certificates of Patricia Fairbanks*, Dkt. No. EDE 3151-05 (Initial Decision, June 5, 2006).

In that decision ALJ La Fiandra found that DYFS investigated the incident involving T.P. and Fairbanks and forwarded that report to the Union County Prosecutor's Office. (Initial Decision, slip op. at 3). The Prosecutor charged Fairbanks with second degree endangerment of the welfare of a child, but downgraded the charges when Fairbanks was admitted to a Pre-Trial Intervention (PTI) program. (Initial Decision, slip op. at 3-4). The criminal charges were dismissed on April 14, 2005, when Fairbanks successfully completed the PTI program. (Initial Decision, slip op. at 4). As to the incident itself, the ALJ found that when Fairbanks drove T.P to her babysitter's house she did not observe any of the symptoms she had learned to associate with asthma attacks, "such as difficulty in breathing and shortness of breath." (Initial Decision, slip op. at 5). The babysitter was not home. (Initial Decision, slip op. at 5). When T.P could not gain entry to her babysitter's building and returned to the street, Fairbanks had already driven away. (Initial Decision, slip op. at 5). Prior to driving T.P. home, Fairbanks did not check

school records for T.P.'s address. At the time of the incident, she was not sure whether she took T.P. home or to the babysitter's house. (Initial Decision, slip op. at 5). The district's policy mandated that "no child shall be sent home alone and that the school authorities must know that someone is home to receive the child." (Initial Decision, slip op. at 5). The ALJ found that Fairbanks' "transportation of a student from the school to an apartment where there was no confirmation that an adult was present is in violation of explicit district policy....On this basis alone, Respondent engaged in conduct unbecoming a principal." (Initial Decision, slip op. at 6). Moreover, ALJ La Fiandra noted that although T.P. may have told Fairbanks someone would be home, "based on the circumstances in this case, *i.e.*, the very young age of the child, the child having suffered an asthma attack earlier that day and the fact that the principal was leaving her at an apartment building, Respondent should have ensured T.P.'s safety by, at a minimum, seeing her to the door." (Initial Decision, slip op. at 7). The ALJ found that Fairbanks' failure to do so was conduct unbecoming. (Initial Decision, slip op. at 7). Based on the entire record before her, the ALJ concluded that Fairbanks' certificates should be revoked. Although ALJ La Fiandra noted Fairbanks' unblemished career and participation in charitable and community activities, she found Fairbanks' conduct to be egregious, warranting the revocation of her certificates. (Initial Decision, slip op. at 8). The ALJ therefore ordered Fairbanks' certificates revoked. (Initial Decision, slip op. at 8).

Fairbanks submitted exceptions to the Initial Decision and the Deputy Attorney General (DAG) representing the Examiners submitted reply exceptions. In her exceptions, Fairbanks argued that the ALJ mischaracterized the Board policy regarding sending children home from school. Fairbanks stated that the policy only applied to children who were ill or injured and that T.P. did not fall into either category when Fairbanks drove her home. (Exceptions, pp. 5-6).

Fairbanks further argued that the district policy did not require confirmation that an adult was present but only that it be known whether someone would be there. (Exceptions, p. 6). Fairbanks claimed that since she asked T.P. whether someone would be available to receive her and T.P. responded affirmatively, she had not violated the policy. (Exceptions, p. 6). Fairbanks also argued that the ALJ erred when she determined that Fairbanks had engaged in conduct unbecoming by not seeing T.P. to the door. Fairbanks noted that both she and T.P. testified that she waited until T.P. entered the building before driving away. (Exceptions, p. 7). Finally, Fairbanks claimed that the ALJ erred in recommending revocation since her “alleged unbecoming conduct could have been, but was not, worse.” (Exceptions, p. 8). She noted that she had submitted extensive mitigating evidence and stated that her career had been “extensive and otherwise unblemished, both prior to and following the incident at issue herein.” (Exceptions, pp. 8-9).

In response, the DAG argued that contrary to Fairbanks’ assertions, the ALJ did not base her finding of unbecoming conduct solely on a violation of district policy, but rather relied heavily on Fairbanks’ exercise of poor judgment in leaving T.P. unattended at an apartment building while knowing that she had suffered from an asthma attack earlier that day. (Reply Exceptions, p. 2). The DAG also refuted Fairbanks’ claims that the district policy did not require confirmation that an adult is present at the student’s home and does not require staff to see the child to the door. The DAG noted that “[t]hese assertions obfuscate the policy’s clear intent to prevent children from being left unattended.” (Reply Exceptions, p. 3). The DAG stated that Fairbanks did not know whether someone was home when she dropped off T.P. and that constituted conduct unbecoming regardless of whether it also violated the district policy. (Reply Exceptions, pp. 3-4). Finally, the DAG argued that revocation was the appropriate penalty in

this case because Fairbanks' actions in leaving T.P. at the apartment building without ensuring an adult was present to receive her were sufficiently egregious to warrant that penalty. (Reply Exceptions, pp. 5-7).

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of July 20, 2006, the State Board of Examiners reviewed the Initial Decision, exceptions and reply exceptions. After full and fair consideration of all the submissions, the Board voted to adopt the Initial Decision, with modification. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. Furthermore, the Board of Examiners agrees with the ALJ that Fairbanks engaged in unbecoming conduct when she drove home a seven-year-old child who had suffered an asthma attack earlier that day, leaving her at an apartment building without verifying that a responsible individual was there to receive her. The Board cannot countenance this lack of judgment from an experienced teacher and administrator. Clearly, Fairbanks' actions amounted to conduct unbecoming a teacher, pursuant to *N.J.A.C. 6A:9-17.5*. Accordingly, the remaining decision for this Board is one of penalty.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C. 6A:9-17.5*. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). "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. There can

be no dispute that Fairbanks' conduct in this incident is serious and mandates some action by this Board. However, the Board disagrees with the ALJ that Fairbanks' 30-year heretofore unblemished record does not mitigate the penalty that is warranted here. Thus, the Board finds that the proper response to Fairbanks' breach is the suspension of her certificates.

Accordingly, pursuant to the Board of Examiners' vote, it is therefore ORDERED that Patricia Fairbanks' Teacher of Elementary School, Supervisor and Principal/Supervisor certificates be suspended for a period of four years effective this 21st day of September, 2006. It is further ORDERED that Fairbanks return her certificates to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing:

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