

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
DAVID TOLER : DECISION ON REMAND
_____ : DOCKET NO: 0405-209

David Toler was the holder of a Teacher of the Handicapped certificate, issued in November 1986. At its meeting of June 8, 2006, the State Board of Examiners (Examiners) considered Toler's case. On October 28, 2004, the Examiners had revoked his certificate for participating in a scheme to defraud the State Health Benefits Program. Toler had provided a psychologist, Dr. Carl Lichtman, with personal information so that Lichtman could file a claim for psychological services he had purportedly provided to Toler. In fact, Lichtman had not treated Toler and was filing false claims. He would then give Toler a portion of the payment he had received on the false claims. After Toler's certificate was revoked, he appealed the decision to the State Board of Education, which affirmed the Examiners' decision. Toler then appealed to the Appellate Division of the Superior Court of New Jersey which remanded the case for hearing on the single issue of whether Toler was unfairly and selectively singled out for certificate revocation from other perpetrators in Lichtman's scheme.

The Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Jesse Strauss heard testimony on December 22, 2006. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on February 13, 2007. *In the Matter of the Certificate of David Toler*, Dkt No. EDE 05946-02 (Initial Decision on Remand, February 13, 2007).

After considering the testimony, ALJ Strauss found that although Toler claimed he knew of other teachers who had participated in Lichtman's scheme that were still teaching, he would not identify them and "at no time reported these people to the Board of Examiners." (Initial

Decision on Remand, slip op. at 4). The Examiners' witness testified that, in all ten other cases where it received information regarding individuals who were involved with Lichtman, the individuals' certificates were revoked. (Initial Decision on Remand, slip op. at 5). The ALJ concluded that "the Board of Examiners has not selectively and unfairly singled out Toler for revocation of his certificate." (Initial Decision on Remand, slip op. at 6). He added that Toler had not provided any evidence "that the Board of Examiners failed to act against any certificate holder whose involvement in the Lichtman scheme came to its attention. (Initial Decision on Remand, slip op. at 7). ALJ Strauss held that Toler could not claim to be "singled out" when he was "treated the same as ten other similarly situated individuals." (Initial Decision on Remand, slip op. at 7). He further held that "without proof that the Board of Examiners chose to ignore situations of which it is aware, Toler fails to provide any support for his claim that he was selectively and unfairly singled out by the Board of Examiners." (Initial Decision, slip op. at 7). Accordingly, because Toler could not prove any selective enforcement, ALJ Strauss concluded "that the penalty of revocation of Toler's certificate is appropriate." (Initial Decision, slip op. at 9). Neither side filed exceptions to the Initial Decision.

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of March 29, 2007, the Board reviewed the Initial Decision. After full and fair consideration of the decision and the issues raised therein, the Board voted to adopt the Initial Decision. The ALJ correctly ruled that the Board of Examiners is not obligated "to ferret out independently potential certificated malefactors" in the absence of the receipt of information regarding a specific certificate holder. (Initial Decision on Remand, slip op. at 9). Rather, as ALJ Strauss noted, if there were other Lichtman scheme participants "continuing to teach in Newark and other districts as Toler contends, and administrators have failed to inform

the Board of Examiners and their identities have not been made known to the Board of Examiners by other sources, then the claim of selective or unfair treatment should have been directed against those districts.” (Initial Decision on Remand, slip op. at 8). The testimony and evidence demonstrated that the Board of Examiners acted consistently against every individual it knew was involved in the Lichtman scheme. As there was no evidence that the Board “intentionally or purposely discriminated against Toler” the Board agrees that the revocation of Toler’s certificate is appropriate in this case. (Initial Decision on Remand, slip op. at 8).

Accordingly, pursuant to the Board of Examiners’ vote, it is therefore ORDERED that the Initial Decision in this matter is adopted. The Board of Examiners’ prior Order of Revocation dated October 28, 2004, stands.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: MAY 7, 2007

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