

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
LaGRETA BROWN : ORDER OF DISMISSAL
_____ : DOCKET NO: 0405-327

At its meeting of July 21, 2005, the State Board of Examiners (Examiners) reviewed information the Division of Youth and Family Services (DYFS) had submitted regarding the principal of Atlantic City High School, (ACHS) LaGreta Brown. DYFS had investigated allegations that Brown had directed one of her subordinates to dismantle the school's fire alarm system so that the school would not have to be evacuated when a trash can fire was reported in a school bathroom. DYFS substantiated allegations of neglect against Brown. Brown currently holds a Teacher of English certificate, issued in October 1983, a Principal/Supervisor Certificate of Eligibility, issued in January 1993, a Principal/Supervisor certificate, issued in September 1994, and a School Administrator Certificate of Eligibility, issued in June 1999.

At its January 20, 2005, meeting, the Examiners voted to issue Brown an Order to Show Cause as to why her certificates should not be suspended or revoked. The Examiners mailed the Order to Brown by regular and certified mail on August 28, 2005. The Order provided that Brown had 30 days to respond. Brown responded to the Order on September 15, 2005. In that Answer, she claimed to be unaware that DYFS had investigated her for neglect. (Answer, ¶ 3). She also claimed that Brenda Rice, who was assigned to the High School's Surveillance Room where the alarm system was located, had given a signed statement that Brown had not directed her to turn off the alarm system. (Answer, ¶ 4). Brown also denied that she had ever directed a subordinate to disable the school's fire alarm system and claimed that DYFS never interviewed her regarding these allegations. (Answer, ¶ 5). She added that DYFS did not have jurisdiction to investigate these allegations regarding the alarm system and argued that the Board of Examiners did not have jurisdiction to hear the matter. (Answer, ¶ 5). Notwithstanding Brown's denials, the Examiners found probable cause to consider the suspension or revocation of her certificates.

The Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Bruce Gorman heard testimony in October 2006. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on January 19, 2007. *In the Matter of the Certificates of LaGreta Brown.*, Dkt No. EDE 0012-06 (Initial Decision, January 19, 2007).

The parties stipulated to several facts. (Initial Decision, slip op. at 2-3). After considering the testimony, ALJ Gorman found that on March 14, 2001, a fire occurred in a wastebasket in a boy's bathroom at ACHS. (Initial Decision, slip op. at 3). The fire did not trigger the school's fire alarm system, so no signal was sent to the Atlantic City Fire Department. (Initial Decision, slip op. at 3). The district's Lead Safety Officer, Brian Daniels, testified that after he left the bathroom where the fire occurred, he noted the building was not being evacuated. (Initial Decision, slip op. at 5). He asked Security Officer Brenda Rice about the situation, who allegedly told him that Brown had instructed her to deactivate the alarm system. (Initial Decision, slip op. at 5). Daniels also testified that he was not in the security center at the time of the fire and did not know who had caused the alarm system to be deactivated, if, in fact it was. (Initial Decision, slip op. at 5). Daniels also did not explain why he did not call the fire department himself to report the fire and admitted that the alarm system had malfunctioned in the past. (Initial Decision, slip op. at 5).

The Examiners also presented mark Benjamin, a detective in the Juvenile Bureau of the Atlantic City Police Department. (Initial Decision, slip op. at 6). Benjamin testified he was assigned to ACHS as a School Resource Officer on March 14, 2001. (Initial Decision, slip op. at 6). He said he was in the security center when Brown entered the room and told Rice to turn off the alarm. (Initial Decision, slip op. at 6).

Brenda Rice testified on Brown's behalf and was adamant that Brown did not ask her to shut off the alarm system. (Initial Decision, slip op. at 8). She also stated that neither she nor anyone else had turned off the system. (Initial Decision, slip op. at 8). Rice noted that when

Brown entered the command room she asked if the system was off and Rice responded that “everything is under control.” (Initial Decision, slip op. at 8).

Before ruling on the substantive issue of the case, the ALJ discussed whether the Examiners had “jurisdiction to bring this action under the facts of this case.” (Initial Decision, slip op. at 10). The ALJ opined that the Order to Show Cause was deficient because it was not based on an adjudicatory substantiation of the facts by DYFS, but rather, on only an investigatory substantiation of the charges. (Initial Decision, slip op. at 10-11). According to ALJ Gorman, that was a significant distinction because the former type of substantiation was the result of a review by a highly-placed DYFS official as opposed to an investigator. (Initial Decision, slip op. at 11). Furthermore, the ALJ noted that “the adjudicative substantiation has quasi-judicial overtones and may be appealed to the OAL.” (Initial Decision, slip op. at 11). ALJ Gorman determined that because the Examiners issued the Order to Show cause based upon a DYFS report, it could not rely on Brown’s “conduct unbecoming” as the basis of its case. (Initial Decision, slip op. at 11). He therefore ruled that the issue of jurisdiction depended upon the type of substantiation that existed. (Initial Decision, slip op. at 10). The ALJ decided to proceed with the case, however, rather than decide it on a “legal technicality” because “given that I have now heard the case, and given the conclusion that I have reached, judicial economy dictates that I render a decision on the merits.” (Initial Decision, slip op. at 11-12).

Overall, the ALJ found that “there exists no competent evidence tending to show that the alarm system was turned off.” (Initial Decision, slip op. at 12). Rather, he noted that “[b]ecause the alarm did not sound, everyone involved assumed it had been disabled.” (Initial Decision, slip op. at 12). ALJ Gorman determined that the testimony showed that the alarm did not sound because “the fire was not of sufficient magnitude to cause it to do so.” (Initial Decision, slip op. at 12). He also found that Brown and the two main witnesses who testified against her, were not “particularly credible” because their “evident antipathy” damaged “the believability of each of them.” (Initial Decision, slip op. at 14). Conversely, ALJ Gorman found Rice’s testimony to be

“credible and believable.” (Initial Decision, slip op. at 14). As the ALJ noted, Rice stated that “she did not disable the alarm system,” and he found no competent evidence existed to controvert that testimony. (Initial Decision, slip op. at 14-15). ALJ Gorman concluded that if Rice did not disable the alarm, the case against Brown must fail. (Initial Decision, slip op. at 15).

ALJ Gorman found that “the allegations contained in the Order to Show Cause have not been proven by a preponderance of the credible evidence.” (Initial Decision, slip op. at 15). In fact, the ALJ concluded that “the credible evidence definitively establishes that respondent did not commit an act of neglect.” (Initial Decision, slip op. at 15). The ALJ therefore ordered the charges against Brown to be dismissed. (Initial Decision, slip op. at 15).

The Deputy Attorney General (DAG) representing the Board of Examiners filed exceptions to the Initial Decision. In those exceptions she argued that the ALJ erred when he determined that only an adjudicatory substantiation would be a sufficient predicate for an Order to Show Cause. (Exceptions, pp. 1-2). The DAG noted that the language of the regulation governing the issuance of Orders to Show Cause, N.J.A.C. 6A:9-17.5, requires, in relevant part, that the Examiners prove a certificate holder’s inefficiency, incapacity, conduct unbecoming or other just cause by a preponderance of the credible competent evidence before it may revoke or suspend a certificate. (Exceptions, p. 2). The DAG also claimed that the regulatory provision which authorized the Examiners to receive information from DYFS on which to base an Order to Show Cause, did not preclude the Examiners from issuing an Order when it believed that grounds for revocation or certification existed. (Exceptions, pp. 2-3). The DAG argued that in all revocation/suspension proceedings, the Examiners were required to prove that the basis for the action was the certificate holder’s conduct. (Exceptions, p.4). In addition to her arguments regarding ALJ Gorman’s reasoning on the DYFS adjudication issue, the DAG also argued that the ALJ erred in holding that Brown was not responsible for the alarm system shut-off and that she handled the fire appropriately. (Exceptions, pp. 5-10). In reply exceptions, Brown argued

that the ALJ's decision was "well-founded in law and in fact" and should "be affirmed in its entirety." (Reply Exceptions, p. 1).

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 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. As noted above, ALJ Gorman found Rice's testimony, which exonerated Brown, to be "credible and believable." (Initial Decision, slip op. at 14). As there was no direct evidence that Brown either ordered the alarm system disabled or did it herself, the Examiners have no choice but to agree with ALJ Gorman's conclusion that the allegations in the Order to Show Cause have not been proven and it must be dismissed. (Initial Decision, slip op. at 15).

Where the Examiners diverge with ALJ Gorman's opinion, however, is on the important issue of the use of DYFS reports in the revocation process. As has been noted previously, 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*. The Board of Examiners may acquire information which forms the basis for the Order to Show Cause in many different ways, including the use of a DYFS report which has substantiated that "a certificate holder has abused or neglected a student or a report in which DYFS identifies its concerns with the conduct of a teaching staff member." *N.J.A.C. 6A:9-17.6(a)5*. Regardless of the source of information that serves as the predicate for an Order to Show Cause, the Examiners still must prove that the certificate holder's conduct justifies action against his or her certificates. Nothing in regulation or Examiners' precedent supports ALJ Gorman's conclusion that the Examiners may only rely on a DYFS report that has been substantiated through an adjudicatory procedure. Furthermore, the fact that the DYFS report has been substantiated through an investigative rather than an adjudicatory procedure is of no

consequence to the case that the Board of Examiners must independently prove before it takes the drastic step of suspending or revoking an individual's teaching certificates. ALJ Gorman's ruling to the contrary is therefore rejected and not a part of this decision adopting his order of dismissal.

Accordingly, on March 29, 2007, the Board of Examiners voted to adopt the Initial Decision with modification and dismiss the Order to Show Cause. On this 3rd day of May 2007, the Board of Examiners formally adopted its written decision to adopt the Initial Decision with modification in this matter, and it is therefore ORDERED that the Order to Show Cause issued to LaGreta Brown is hereby dismissed effective this day.

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.