

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
EARL HAYES : ORDER OF REVOCATION
_____ : DOCKET NO: 0405-176

At its meeting of January 20, 2005, the State Board of Examiners reviewed information it had received from the Office of Compliance (OCI) within the Department of Education. The OCI had provided information about Earl Hayes. An employee of the Paterson Charter School for Urban Leadership (PCSUL) had alleged that George Featherson, the head of the school, had accepted a \$30,000 award from Hayes' company. In return, Featherson appointed Hayes to a "no show" job at the Charter school at a salary of \$90,000. Although Hayes repaid the salary amount to the school, he used the salary amount to increase his pension eligibility. After the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) learned of the scheme, it denied Hayes his pension. On January 20, 2005, the Board of Examiners voted to issue an Order to Show Cause to Hayes. Hayes currently holds a Secondary School Teacher of Social Studies, issued in October 1970, and a Principal/Supervisor certificate, issued in December 1976.

The Board sent Hayes the Order to Show Cause by regular and certified mail on February 9, 2005. The Order provided that Hayes must file an Answer within 30 days. Hayes filed his Answer on February 15, 2005. In his Answer, Hayes claimed that the company for which he worked awarded a grant to the PCSUL, but that it was not "his" company. (Answer, ¶ 3). He admitted that he accepted a job at the school and that his salary was covered by a continuing grant. (Answer, ¶ 3). Hayes denied that there was ever any scheme to defraud the TPAF and that his retirement plans were made based on the TPAF's member handbook. (Answer, ¶ 5).

The Board of Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Joseph Fidler heard testimony on July 17 and 20, 2006. After

the record closed, the ALJ issued an Initial Decision on April 19, 2007. *In the Matter of the Certificates of Earl Hayes*, Dkt. No. EDE 978-05 (Initial Decision, April 19, 2007).

In that decision, ALJ Fidler found that in December 2001 Hayes sent a letter to approximately 30 charter schools introducing his company, Kensington Associates, as a “non-profit educational organization that deals with assessments and development.” (Initial Decision, slip op. at 3). Within the letter, Hayes explained that Kensington needed to make a \$30,000 donation to another non-profit organization by December 31, 2001 in order to comply with IRS requirements. (Initial Decision, slip op. at 3). In exchange, the school was to hire an employee of Kensington as a member of the school’s administrative team. (Initial Decision, slip op. at 3). The letter stated that “the purpose of the position was to enhance Kensington’s research and development activities, and the position would be funded by Kensington. (Initial Decision, slip op. at 3).

Hayes and George Featherson entered into an agreement in which Kensington would donate \$30,000 to the PCSUL and, in exchange, the PCSUL would hire Hayes at a salary of \$90,000. (Initial Decision, slip op. at 3-4). Kensington would reimburse the PCSUL for Hayes’ salary, taxes and pension contributions to the TPAF. (Initial Decision, slip op. at 4). The ALJ found that Hayes only went to the charter school’s premises twice, both times when he was still negotiating for the position. (Initial Decision, slip op. at 5). His subsequent contacts were all by phone and correspondence. (Initial Decision, slip op. at 5).

On March 26, 2002, Hayes applied to the State Division of Pensions and Benefits for transfer of his membership in the Public Employees’ Retirement System to TPAF. (Initial Decision, slip op. at 5). He listed his employer as PCSUL and noted that his new position was assistant director of curriculum. (Initial Decision, slip op. at 5). Hayes’ application was denied. (Initial Decision, slip op. at 5-6). The TPAF determined that he had been on PCSUL’s payroll from January 1, 2002, through December 31, 2002, without performing any services. (Initial Decision, slip op. at 6).

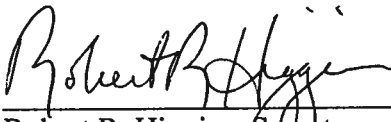
After considering the testimony, ALJ Fidler found that Hayes did nothing for the charter school and that his primary motivation for making this arrangement with the PCSUL “was to enhance his pension benefit in the TPAF without providing services.” (Initial Decision, slip op. at 9). He found that his motivation could be inferred from the unusual reimbursement relationship with the charter school, which did not require Hayes to come to work and the testimony of Daniel McTiernan, who testified that Hayes sought to be hired by a charter school without doing any work. (Initial Decision, slip op. at 9). The ALJ concluded that Hayes’ conduct was improper. (Initial Decision, slip op. at 9). He further concluded that the Board of Examiners had met its burden of proving that “Hayes committed unbecoming conduct by engaging in a plan to obtain a position at a charter school for the purpose of enhancing his pension benefits without providing services in return.” (Initial Decision, slip op. at 9). ALJ Fidler therefore held that Hayes’ unbecoming conduct warranted the revocation of his certificates. (Initial Decision, slip op. at 9). Neither Hayes nor the Deputy Attorney General representing the Board of Examiners filed any 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 June 7, 2007, the State Board of Examiners reviewed the Initial Decision. After full and fair consideration of all the submissions, the Board voted to adopt the Initial Decision. 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. Hayes purposefully set out to secure himself a “no show” job while lining his pockets with an increased pension entitlement. His behavior leaves no doubt that he clearly has engaged in conduct unbecoming a teacher, one of the grounds for revocation or suspension of a teaching certificate. *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. The Board of Examiners agrees with the ALJ that Hayes' conduct warrants condemnation. The Board further agrees that revocation is the only appropriate response to Hayes' breach.

Accordingly, on June 7, 2007, the Board voted to adopt the Initial Decision and revoke Hayes' certificates. On this 19th day of July 2007, the Board formally adopted its decision to revoke and it is therefore ORDERED that Earl Hayes' Secondary School Teacher of Social Studies and Principal/Supervisor certificates be revoked on this day. It is further ORDERED that Hayes return his certificates to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.


 Robert R. Higgins, Secretary
 State Board of Examiners

Date of Mailing: JULY 25th, 2007

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