

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
NELSON EVANS, JR. : ORDER OF SUSPENSION
_____ : DOCKET NO: 1112-111

At its meeting of September 15, 2011, the State Board of Examiners (Board) reviewed a report it had received from the Office of Fiscal Accountability and Compliance (OFAC) regarding Nelson Evans, Jr. The report, titled “Gloucester Township Public School District, Alleged NJ ASK4 Test Breach,” concluded that Evans did not properly administer the NJ ASK4 test. OFAC reported that Evans breached test protocol by helping students on the test. Specifically, OFAC concluded that Evans conducted math reviews prior to the test, which was contrary to the test security agreement. Evans also allegedly reworded some questions on the test for students. Evans currently holds a Teacher of the Handicapped certificate, issued in August 2002. Upon review of the above information, at its November 1, 2011 meeting, the Board voted to issue an Order to Show Cause to Evans as to why his certificate should not be suspended for one year.

After securing a correct address, the Board sent Evans the Order to Show Cause by regular and certified mail on April 17, 2012. The Order provided that Evans must file an Answer within 30 days. Evans responded on May 11, 2012. In his Answer, Evans admitted that the OFAC report spoke for itself but denied any conclusions reached that he breached the test security agreement or reworded questions for students. (Answer, ¶ 3). Evans also denied that he engaged in inappropriate conduct and stated that there was no just cause to consider the suspension of his certificate. (Answer, ¶ 4). Evans also filed some affirmative defenses including: procedural deficiencies, lack of specificity, vagueness, lack of due process, laches, and the fact that he had successfully tested students after the 2010 test cycle without incident or allegation. (Answer, Affirmative Defenses, ¶¶ 3,4,6,9,10,12). Finally, Evans stated that he was entitled to a hearing at the Office of Administrative Law. (Answer, Affirmative Defenses, ¶ 14).

Since there were material facts in dispute, on May 11, 2012, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. Administrative Law Judge (ALJ) Lisa James-Beavers heard the matter on May 21 and 23, 2013. The record closed on June 24,

2013, and the ALJ issued an Initial Decision on August 8, 2013. *In the Matter of the Teaching Certificate of Nelson Evans, Jr.*, Dkt. No. EDE 7017-12 (Initial Decision, August 8, 2013).

After assessing the witnesses' credibility and their direct knowledge of the events, the ALJ found that student M.F. "testified credibly that Evans helped her when she asked for help." (Initial Decision, slip op. at 17). Although another student told the Principal that Evans gave M.F. the answers while M.F. recalled only that Evans told her to check her answer, the ALJ determined that, in either case, "Evans interfered with the independence of the students taking the exam." *Id.* at 17-18. ALJ James-Beavers concluded that Evans reviewed both Math and Language Arts items with his students, particularly M.F., and that by providing this help, Evans breached the Statewide Assessments Test Security Agreement that he had signed. *Id.* at 18. The ALJ concluded that Evans' breach of the test security agreement constituted conduct unbecoming a teacher. *Ibid.* ALJ James-Beavers found that "Evans' interference with the students taking the test compromised the validity of the test scores such that they had to be discarded." *Id.* at 18-19. As a result, the ALJ determined that the Board "met its burden of proving by a preponderance of the credible evidence" that suspension of Evans' certificate for one year was justified. *Id.* at 19. ALJ James-Beavers therefore ordered Evans' certificate suspended for one year. *Ibid.* Evans submitted Exceptions in the case and the Deputy Attorney General (DAG) representing the Board submitted Reply Exceptions.

In his Exceptions, Evans noted that he suffered an increment withholding for the test breach at issue and apologized to his Superintendent, who stated that the matter was resolved. (Exceptions, p. 1). Evans added that he administered the NJASK for two consecutive years after the test breach before he was told "that the state was bringing charges against me for the same matter." (Exceptions, p. 1). Evans stated that with the current one year suspension, he would not be able to return to the classroom until the 2014-2015 school year, with "no guarantee to return back to my district at that point." (Exceptions, p. 2).

In his Reply Exceptions, the DAG argued that the findings in the Initial Decision were "clearly supported by ample evidence" and that the legal conclusions were "well-reasoned and based on applicable statutes, regulations and case law." (Reply Exceptions, pp. 1-2). The DAG noted that ALJ James-

Beavers found that Evans had violated the test security agreement by interfering with the independent work of students and that this breach constituted conduct unbecoming. (Reply Exceptions, pp. 3-4). The DAG therefore urged the Board to adopt the Initial Decision. (Reply Exceptions, p. 4).

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of September 20, 2013, the Board reviewed the Initial Decision, the Exceptions and Reply Exceptions. After full and fair consideration of the Decision, 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. As noted above, after assessing the evidence and the credibility of the witnesses, ALJ James-Beavers found that Evans had interfered with his students' independent work on the 2010 NJ ASK4 test. (Initial Decision, slip op. at 17-19.) That interference undermined the integrity of the test, to the extent that Evans' students had their scores discarded. Although Evans may have successfully administered successive exams, having learned from his mistake, his initial breach cannot go unpunished. The Board, therefore, further agrees with the ALJ's conclusion that he engaged in unbecoming conduct and that a one-year suspension of his certificate is appropriate.

Accordingly, on November 1, 2013, the Board voted to adopt the Initial Decision and suspend Nelson Evans, Jr.'s Teacher of the Handicapped certificate for a period of one year. On this 6th day of December 2013, the Board formally adopted its written decision to adopt the Initial Decision in this matter, and it is therefore ORDERED that Evans' certificate be hereby suspended for a period of one year, effective January 1, 2014. It is further ORDERED that Evans return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. 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:

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A. 18A:6-38.4*.