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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0237-21**

**IN THE MATTER OF THE  
CERTIFICATES OF RITA  
O'MALLEY BY THE STATE  
BOARD OF EXAMINERS.**

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Argued September 28, 2023 – Decided October 6, 2023

Before Judges Mayer, Enright and Paganelli.

On appeal from the New Jersey Commissioner of Education, Docket No. 3-2/21A.

Victoria A. Lucido argued the cause for appellant Rita O'Malley (Aloia Law Firm LLC, attorneys; Victoria A. Lucido, of counsel and on the brief; Brian J. Aloia, on the brief).

Amna T. Toor, Deputy Attorney General, argued the cause for respondent New Jersey Commissioner of Education (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Amna T. Toor, on the brief).

**PER CURIAM**

Petitioner Rita O'Malley appeals from an August 12, 2021 final agency decision by the New Jersey Commissioner of Education (Commissioner)

upholding a determination by the New Jersey State Board of Examiners (Board) to revoke O'Malley's teaching certificates. We affirm.

O'Malley is a special education teacher and was a licensed Learning Disabilities Teacher Consultant (LDTC). She held teaching certificates in the fields of social studies and education of the handicapped. In 2000, she worked as an LDTC for the Woodbridge Township School District (District). As a District LDTC, O'Malley's responsibilities included testing and diagnosing learning disabilities, preparing individualized education programs (IEPs) for students, meeting with teachers and parents to discuss student evaluations, and providing guidance on the best programs for students requiring educational assistance.

To provide an accurate evaluation of students' academic abilities and needs, O'Malley employed the Woodcock-Johnson III test. The test consists of multiple subtests in several areas—including math, language, general comprehension, and reading—which help an LDTC determine whether a student has a learning disability and requires academic assistance. O'Malley oversaw approximately eighty-eight students as an LDTC. In addition to testing students, O'Malley frequently traveled to various District schools and submitted monthly travel vouchers for mileage reimbursement.

On or about June 17, 2015, parents of a District student contacted a school psychologist to report their child had not been tested or evaluated for academic assistance. As a result, the District undertook a random review of student evaluations conducted by O'Malley. O'Malley's supervisor examined the random sample of O'Malley's evaluations and found numerous discrepancies and omissions related to the tests O'Malley conducted. The review uncovered missing test scores and other testing deficiencies. The supervisor also discovered discrepancies in O'Malley's mileage reimbursement for the 2015 school year and found websites misrepresenting that O'Malley held a doctorate degree.

On October 26, 2015, the Superintendent of Schools for the Woodbridge Township Board of Education certified tenure charges against O'Malley, alleging she engaged in neglectful conduct, unbecoming conduct, insubordination, and other just cause. According to the charges, O'Malley failed to administer certain subtests, created false scores and write-ups for tests that were never administered, failed to include test results or submitted incorrect test results for tests actually administered, and misplaced or failed to complete testing protocols. The charges further alleged O'Malley submitted inaccurate mileage reimbursement vouchers.

After receiving the charges, O'Malley tendered her resignation, which the Board accepted. However, she never responded to the tenure charges.

On January 6, 2016, the Commissioner adjudicated the uncontested tenure charges, finding O'Malley engaged in conduct unbecoming a teacher. The Commissioner granted summary decision to the Board and dismissed O'Malley from her tenured position with the District, subject to the Board taking "action against [O'Malley]'s certificate(s) as that body deem[ed] appropriate."

On or about April 20, 2016, the Board filed an order to show cause why O'Malley's teaching certificates should not be revoked or suspended. O'Malley filed an answer and requested the matter be transferred to the Office of Administrative Law (OAL) for a hearing as a contested case. The matter was assigned to an administrative law judge (ALJ), who held hearings over five separate dates. The ALJ heard testimony from O'Malley, O'Malley's supervisor, and the school psychologist who received the parental complaint reporting O'Malley's failure to test their child.

In her August 31, 2020 initial decision, the ALJ found O'Malley's supervisor to be a "knowledgeable, direct, and articulate witness." On the other hand, the ALJ found O'Malley's testimony was "not as credible" and O'Malley lacked "assur[ance] in her command of the [Woodcock-Johnson III test] material

and at times . . . appeared confused when questioned regarding the intricacies of scoring the [Woodcock-Johnson III test]." The ALJ noted O'Malley did not deny failing to administer certain tests.

The ALJ's decision included a detailed recitation of the testimony provided by O'Malley's supervisor. According to the testimony, the supervisor reviewed twelve individual student testing files. Based on her review, the supervisor described the missing, incomplete, or inaccurate test results for each student. O'Malley's supervisor testified the failure to properly administer the tests and accurately record the results affected the District's ability to identify a student's specific learning disabilities and the type of academic services the student should receive. Based on the supervisor's testimony, the ALJ found O'Malley committed testing errors or omissions for eleven out of the twelve students.

The ALJ rejected the charge related to the false mileage reimbursement because the District failed to document the claimed mileage discrepancies. Moreover, O'Malley provided documentation refuting the District's claim she submitted false mileage reimbursement requests.

The ALJ also rejected the District's charge that O'Malley falsely represented holding a doctorate degree. The judge found the websites indicating O'Malley held such a degree were not created or controlled by O'Malley.

Based on the evidence and testimony, the ALJ concluded O'Malley "failed to administer tests to students and her test scoring and educational evaluation reports contained numerous inaccuracies and discrepancies." Additionally, the ALJ found O'Malley's "conduct was not an isolated incident but rather a pattern of significant errors in the performance of her duties as an LDTC." Thus, the ALJ determined O'Malley's "conduct was neglectful and evidenced incompetence."

In considering the penalty to be imposed, the ALJ concluded O'Malley had "already been sanctioned for the conduct charged by [the District] through the loss of her tenure and position with Woodbridge." Because O'Malley's record prior to the 2014-2015 school year was "without blemish," the ALJ recommended O'Malley's teaching certificates be suspended for a period of three years, to be reinstated once O'Malley completed a Board-approved educational program on testing procedures and educational evaluations, rather than revoking her teaching certificates.

After receiving the ALJ's recommendation, the Board agreed with the ALJ's assessment regarding O'Malley's conduct but disagreed as to the appropriate penalty. The Board noted O'Malley's "conduct occurred several times and involved several students" and that an LDTC "bears great responsibility in ensuring . . . appropriate educational program[s] for special education students." The Board found O'Malley's failures demonstrated a significant and pervasive pattern of conduct that was "egregious and careless, if not intentionally fraudulent," warranting revocation of her teaching certificates.

O'Malley appealed to the Commissioner pursuant to N.J.S.A. 18A:6-38.4 and N.J.A.C. 6A:4-1.3. In an August 12, 2021 final decision, the Commissioner found the record adequately supported the Board's determination that, "even if not willful, [O'Malley's] errors were . . . significant and pervasive, demonstrating a pattern of conduct . . . found to be egregious and careless." The Commissioner noted "the testing and evaluations done by an LDTC are critical to determining whether a student receives special education services, as well as the nature, frequency, duration, and other specifics related to the delivery of those services." The Commissioner further found O'Malley's "repeated failures to live up to these critical responsibilities warranted revocation of her certificates." Based on the record, the Commissioner concluded the Board's

decision was not arbitrary, capricious, or unreasonable, and the penalty of revocation did not "shock[] one's sense of fairness."

On appeal, O'Malley argues the Commissioner's decision was arbitrary, capricious, and unreasonable. Specifically, she asserts the decision to modify the penalty from suspension of her teaching certificates, as recommended by the ALJ, to revocation of the certificates lacked sufficient credible evidence in the record and "shock[ed] . . . one's sense of fairness." We disagree.

Our review of an agency's final determination is limited. Allstars Auto Group, Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). An agency's decision will be upheld unless there is "a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Ibid. (quoting Russo v. Bd. of Trs., Police & Firemen's Retirement Sys., 206 N.J. 14, 27 (2011)). We are guided by three inquiries:

(1) whether the agency's action violates express or implied legislative policies . . . ; (2) whether the record contains substantial evidence to support the [agency's] findings . . . ; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Ibid. (quoting In re Stallworth, 208 N.J. 182, 194 (2011)).]



We owe "substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007).

We also owe deference to an agency's imposition of sanctions. Ibid. When reviewing an agency's choice of sanction, "the test . . . is 'whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness.'" Id. at 28-29 (quoting In re Polk, 90 N.J. 550, 578 (1982)). "The threshold of 'shocking' the court's sense of fairness is a difficult one, not met whenever the court would have reached a different result." Id. at 29.

Under N.J.A.C. 6A:9B-4.4, the Board "may revoke or suspend the certificate(s) of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause." Unbecoming conduct is conduct "'which adversely affects the morale or efficiency of [an agency]' or 'has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services.'" Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 14 (2017) (quoting In re Young, 202 N.J. 50, 66 (2010)). A finding of unbecoming conduct "need not be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior" expected of one in a public

position. Id. at 13-14. "The touchstone . . . [is] the certificate holder's 'fitness to discharge the duties and functions of one's office or position.'" Young, 202 N.J. at 66 (quoting In re Grossman, 127 N.J. Super. 13, 29 (App. Div. 1974)).

Here, there was sufficient credible evidence in the record supporting the determinations by the Board and the Commissioner that O'Malley engaged in conduct warranting revocation of her teaching certificates. Based on the uncontroverted evidence presented during the OAL hearings, O'Malley failed to administer critical tests to students and failed to properly record the results of the tests she did administer. Her failures affected students who required additional educational services. O'Malley's actions directly related to her fitness to discharge her LDTC duties, and the Board had the power to revoke her teaching certificates under the circumstances.

By repeatedly failing to carry out critical components of special education testing necessary to determine a student's special educational needs, O'Malley was unfit to discharge her duties as an LDTC. Under the circumstances, the decision to revoke rather than suspend O'Malley's teaching certificates was not so egregious as to shock one's sense of fairness given the severity and extent of her errors.

To the extent we have not specifically addressed any of O'Malley's remaining arguments, the arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION