

SUBCHAPTER 17. STATE BOARD OF EXAMINERS'  
PROCEEDINGS**6A:9-17.1 Certificate holder**

(a) For purposes of this subchapter, the term certificate holder shall include all individuals who hold certificates, credentials, CEAs and CEASs issued by the State Board of Examiners.

(b) For purposes of this subchapter, the term certificate shall include all standard, emergency and provisional certificates, all credentials and all CEAs and CEASs issued by the State Board of Examiners.

(c) All certificate holders shall report their arrest or indictment for any crime or offense to their superintendent within 14 calendar days. The report shall include the date of arrest or indictment and charge(s) lodged against the certificate holder. Such certificate holders shall also report to their superintendents the disposition of any charges within seven calendar days of disposition. Failure to comply with these reporting requirements may be deemed "just cause" pursuant to N.J.A.C. 6A:9-17.5. School districts shall make these requirements known to all new employees and to all employees on an annual basis.

Amended by R.2006 d.170, effective May 15, 2006.  
See: 37 N.J.R. 4612(a), 38 N.J.R. 2126(a).

Made a stylistic change.

Amended by R.2008 d.7, effective January 7, 2008.  
See: 39 N.J.R. 3441(a), 40 N.J.R. 113(b).

Inserted designation (a); in (a), inserted "credentials,"; and added (b).  
Amended by R.2009 d.24, effective January 5, 2009.  
See: 40 N.J.R. 4856(a), 41 N.J.R. 128(a).

Added (c).

**6A:9-17.2 Conduct barring candidate from certification**

Notwithstanding that a candidate may meet all requirements for certification, the Board of Examiners may refuse to issue a certificate to that candidate if, based on the record before it, the Board of Examiners determines that, for reasons set forth in N.J.A.C. 6A:9-17.5, the candidate is not suitable for employment as a teaching staff member in the public schools.

**6A:9-17.3 Candidates to provide information regarding criminal history**

(a) As part of the application for certification, a candidate must advise the Office whether he or she has a record of conviction(s) for any crime or offense in New Jersey or any other state or foreign jurisdiction. Candidates who have been convicted shall complete a form approved by the Secretary setting forth the details of the conviction(s).

(b) The Board of Examiners shall review all information the candidate provides and determine whether the candidate's criminal history is such that he or she should not receive a certificate. In making its determination, the Board of Examiners shall consider the Rehabilitated Convicted Offenders

Act, N.J.S.A. 2A:168A-1 et seq., and whether the crime(s) or offense(s) would be disqualifying under N.J.S.A. 18A:6-7.1 et seq.

Amended by R.2008 d.7, effective January 7, 2008.

See: 39 N.J.R. 3441(a), 40 N.J.R. 113(b).

In (a), inserted "or foreign jurisdiction".

**6A:9-17.4 District reporting responsibility**

(a) The chief school administrator of a district shall notify the Board of Examiners when:

1. Tenured teaching staff members who are accused of criminal offenses or unbecoming conduct resign or retire from their positions;

2. Nontenured teaching staff members, including substitute teachers, who are accused of criminal offenses or unbecoming conduct resign, retire or are removed from their positions;

3. A certificate holder fails to maintain any license, certificate or authorization pursuant to N.J.A.C. 6A:9-4.1(b) that is mandated in order for the holder to serve in a position;

4. He or she becomes aware that a certificate holder has been convicted of a crime or criminal offense while in the district's employ; or

5. He or she has received a report from the Division of Youth and Family Services (DYFS) substantiating allegations of abuse or neglect or establishing "concerns" regarding a certificated teaching staff member.

(b) In the event that the Board of Examiners issues an order to show cause based on the information that the school district provided about the certificate holder, it shall be the responsibility of the reporting school district to cooperate with the Board of Examiners in any proceeding arising from the order to show cause.

Amended by R.2006 d.170, effective May 15, 2006.

See: 37 N.J.R. 4612(a), 38 N.J.R. 2126(a).

Made a stylistic change in (a)2; and added (b).

Amended by R.2008 d.7, effective January 7, 2008.

See: 39 N.J.R. 3441(a), 40 N.J.R. 113(b).

In (a)3, deleted "or" from the end; in (a)4, inserted "or criminal offense" and substituted "; or" for a period at the end; and added (a)5.

Amended by R.2009 d.24, effective January 5, 2009.

See: 40 N.J.R. 4856(a), 41 N.J.R. 128(a).

In (a)2, inserted ", including substitute teachers,".

**Case Notes**

Non-tenured English teacher who was terminated mid-year for misconduct improperly filed an action before the Commissioner of Education, who lacked jurisdiction where the teacher made no claim that her termination violated any constitutional or legislatively-conferred rights, but was based solely on her claim that the Board improperly terminated her when it lacked just cause; the teacher's contention that just cause was required prior to termination was derived from the collective bargaining agreement and the Commissioner did not have jurisdiction over contractual disputes. Therefore, although the Board committed a procedural error in reporting the teacher's dismissal prematurely, there was no evidence that she pursued her grievance in an

appropriate forum, and the error had no impact on her rights. Hudson v. Bd. of Educ. of Mount Olive, OAL Dkt. No. EDU 9142-08, 2009 N.J. AGEN LEXIS 747, Final Decision (September 24, 2009).

### 6A:9-17.5 Grounds for revocation and suspension of certification

The Board of Examiners 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. Other just cause shall include, but not be limited to, offenses within the terms of the forfeiture statute, N.J.S.A. 2C:51-2, or the disqualification statute, N.J.S.A. 18A:6-7.1. The Board of Examiners may revoke or suspend a certificate upon evidence that the holder did not meet the qualifications for the certificate at the time of issuance or no longer satisfies the criteria set forth in N.J.A.C. 6A:9-5.1(b). The Board of Examiners shall not revoke or suspend a certificate without providing the holder an opportunity to be heard pursuant to N.J.A.C. 6A:9-17.6.

#### Case Notes

Principal's failure to notify a fire department of a fire in the school and the disabling of an automatic reporting of an alarm to the local fire department without notifying a fire official were imminent hazards, violated the State Fire Prevention Code, and constituted unbecoming conduct. The alarm system had been malfunctioning, however, and the principal, who had a long and distinguished career as an educator, honestly believed he was doing his best to keep the students safe; on reconsideration, the principal's administrative certificates were suspended from February 21, 2008 until May 1, 2008, rather than for two years. In re Certificates of Kramer, OAL Dkt. No. EDE 2085-07; SBE No. 0607-148 (On Reconsideration), 2009 N.J. AGEN LEXIS 622, State Board of Examiners Decision (January 13, 2009), *aff'd*, No. 115-09A (N.J. Comm'r of Educ. April 8, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 325) adopted, which concluded that revocation of a teacher's certificate was warranted because the teacher maintained an inappropriate out-of-school relationship with a 17-year-old female student at the school, which included overnights at his apartment; the absence of evidence of sexual or romantic involvement did not mitigate the seriousness of the infraction. An objective standard applies, and thus the teacher's intent, as well as the consent of the student or her mother, were not controlling in judging the appropriateness of his behavior. In re Certificate of Cantillon, OAL Dkt. No. EDE 10433-06, State Board of Examiners Decision (July 17, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 294) adopted, which concluded that a high school teacher's comments in the classroom, involving the words "gay," "hickey," and "triple-X," while inappropriate, could not be interpreted as anything other than instantaneous or reflexive comments having no intent other than to make light of a situation or illustrate the students' inappropriate behavior, and, as such, warranted a one-year suspension of the teacher's certificates. In re Certificates of Zantow, OAL Dkt. No. EDE 459-07, State Board of Examiners Decision (July 17, 2008).

Where a teacher was alleged to have breached security procedures in administering the Grade Eight Proficiency Assessment test, the New Jersey State Board of Education reversed the State Board of Examiners' determination to revoke the teacher's certificates under N.J.A.C. 6A:9-17.5 and instead ordered suspension of the teacher's certificates. While the teacher did provide confidential information that would give students an unfair advantage, the teacher did not provide specific answers to the questions on the test and had an excellent employment history. In re Revocation of Teaching Certificates of Karis, OAL Dkt. No. EDE 1564-07; SBE No. 0607-111; SB No. 7-08, 2008 N.J. AGEN LEXIS 722, State Board of Education Decision (June 18, 2008).

Teacher engaged in conduct unbecoming a teacher when he masturbated in a public store; thus, the teacher's teaching certificate was revoked under N.J.A.C. 6A:9-17.5. The teacher could not exclude his "out-of-school" behavior from the State Board of Examiners' examination. In re Certificates of Jordan, OAL Dkt. No. EDE 00460-07; SBE No. 0506-287, State Board of Examiners Decision (February 21, 2008), *aff'd*, SB No. 17-08 (N.J. Comm'r of Educ. August 13, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 679) adopted, finding that a teacher's Teacher of Elementary School Certificate of Eligibility and Teacher of Elementary School certificates were revoked under N.J.A.C. 6A:9-17.5 for breaching the security of the New Jersey Assessment of Skills and Knowledge Test. The teacher willfully read the reading comprehension sections of the test aloud, ignored time elements, and attempted to provide substantive assistance to a student while she was taking the test. In re Certificates of Mascuch, OAL Dkt. No. EDE 00458-07; SBE No. 0607-134, State Board of Examiners Decision (January 17, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 713) adopted, determining that a teacher and co-owner of a preschool, who was alleged to have known that the preschool was making fraudulent payroll payments to an individual who did not perform any duties at the preschool, should not have her teacher of elementary school and teacher of nursery school certificates revoked or suspended under N.J.A.C. 6A:9-17.5 because the teacher was unaware of the payment arrangements. In re Certificates of Natalini, OAL Dkt. No. EDE 09629-05; SBE No. 0405-104, State Board of Examiners Decision (January 17, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 604) adopted, which, under N.J.A.C. 6A:9-17.5, revoked a special education teacher's teaching certificates because the teacher had used racial epithets during class, allowed students to play video games during class while conducting very little instruction, yelled at students, advocated violence, and viewed pornography while in the classroom. The ALJ was in the best position to render credibility determinations and concluded that the teacher's deleterious actions rendered him unfit to hold a teaching certificate in New Jersey. In re Certificates of Grendysa, OAL Dkt. No. EDE 985-03; SBE No. 726-06/02, State Board of Examiners Decision (January 17, 2008).

Revocation of an educator's certificates was warranted, where the ALJ assessed conflicting testimony and found that the Board of Examiners met its burden of establishing by a preponderance of the credible evidence that the educator, who operated an educator assessment company, engaged in a plan to obtain a position at a charter school for the purpose of enhancing his pension benefits without providing services in return. It was not necessary to prove that the educator engaged in a criminal conspiracy. In re Certificates of Hayes, OAL Dkt. No. EDE 978-05; SBE No. 0405-176, 2007 N.J. AGEN LEXIS 202, Initial Decision (April 19, 2007), adopted (State Bd. of Examiners July 19, 2007).

Where there was no direct evidence that a school principal, who held a Teacher of English Standard Certificate, a Principal/Supervisor Certificate, a Principal/Supervisor Standard Certificate, and a School Administrator Certificate of Eligibility, ordered a fire alarm system disabled or did it herself after a trash can fire, neglect allegations were not proven. The Administrative Law Judge found the principal's testimony credible, and the principal's certificates were not revoked or suspended pursuant to N.J.A.C. 6A:9-17.5 (adopting as modified 2007 N.J. AGEN LEXIS 31). In re Certificates of Brown, OAL Dkt. No. EDE 0012-06; SBE No. 0405-327, State Board of Examiners Decision (May 3, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 37) adopted, finding that the New Jersey Department of Education did not meet its burden of proof to establish corporal punishment and unbecoming conduct by a teacher to warrant suspension or revocation of her teaching certificates under N.J.A.C. 6A:9-17.5. Based on the evidence, the physical intervention by the teacher between fighting students was reasonably justified to quell a disturbance that threatened physical injury to others and for the purpose of self-defense. In re Certificates of Koonce, OAL Dkt. No. EDE 6300-05; SBE No. 405-255, 2007 N.J. AGEN LEXIS 539, State Board of Examiners Decision (May 3, 2007).

Suspension of teacher's Teacher of Industrial Arts certificate was warranted under N.J.A.C. 6A:9-17.5 due to conduct unbecoming of a teacher, including engaging in inappropriate horseplay with a female student, inappropriately touching female students, and making inappropriate comments to his students. Under the facts of the case, revocation of the teacher's certification was too harsh a penalty and a two-year suspension of his teaching certificate was warranted instead. In re Revocation of Teaching Certificate of Chavez, OAL Dkt. No. EDE

11443-03; SBE No. 776-06/03; SB No. 26-06, 2006 N.J. AGEN LEXIS 1091, State Board of Education Decision (April 4, 2007).

ALJ assessed credibility and found that a school nurse left used needles in a common supply closet, failed to maintain the medical waste disposal box, failed to properly treat injured students, and turned out the lights, locked her office door, and failed to answer the door to treat a