

80-20A

SBE Decision: <https://www.state.nj.us/education/legal/examiners/2019/sept/1112-212.pdf>

State Board of Examiners Dkt No. 1112-212

OAL Dkt. No. EDE 10823-12

Agency Dkt. No. 6-10/19A

## **New Jersey Commissioner of Education**

### **Final Decision**

In the Matter of the Suspension of the  
Certificates of Craig Forte, State Board of  
Examiners, New Jersey Department of  
Education.

Order of Suspension by the State Board of Examiners, September 19, 2019

For the Respondent-Appellant, Samuel Wenocur, Esq.

For the Petitioner-Respondent State Board of Examiners, Geoffrey Stark, Deputy  
Attorney General (Gurbir S. Grewal, Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with appellant Craig Forte's appeal of the Order of the State Board of Examiners, dated September 19, 2019, suspending his Teacher of Elementary School Certificate of Eligibility with Advanced Standing, Teacher of Students with Disabilities Certificate of Eligibility, Teacher of Elementary School Certificate, and Teacher of Students with Disabilities Certificate for a period of one year. Following the issuance of an Order to Show Cause by the Board and a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that appellant engaged in conduct unbecoming a teacher and recommended that appellant's certificates be suspended for a period of six months. The ALJ found that petitioner, a middle school special education teacher, breached security protocols when administering the Alternate Proficiency Assessment (APA) because there were too many instances of similar or verbatim responses to open-ended questions across the student portfolios and writing tasks. Thereafter,

the Board adopted the Initial Decision of the ALJ and increased the penalty to a one year-suspension of appellant's teaching certificates, finding that appellant's unbecoming conduct was more than a technical oversight and directly impacted the security of the test, such that a longer suspension was warranted.

On appeal, appellant maintains that he used the discrete trial intervention (DTI) method of instruction, an accepted method of instruction for students with autism, and that DTI can result in students memorizing model essays and generalizing them in their assessment responses. Appellant argues that the similarity in the responses results from his method of instruction rather than any inappropriate prompts by him and notes that there was no firsthand testimony that he engaged in any wrongdoing. Appellant further asserts that the APA guidelines do not prohibit the use of DTI and reading them to do so inappropriately subjects him to a rule that is unclear and vague. Finally, appellant argues that a one-year suspension is excessive, citing to his performance in the eight years since the incidents at issue.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*.

After a comprehensive review of the record, the Commissioner finds that the record adequately supports the Board's determination that appellant engaged in unbecoming conduct and that a one-year suspension of appellant's certificates was the appropriate penalty. The ALJ found Elizabeth Celentano of the Department of Education's Office of Assessments to be credible when she testified that it was not possible for so many students to have the same

answers without assistance, and further found appellant not credible when he testified that he did not notice the similarity among the responses, or between the responses and his own model essay – which he had been using for six years. The Board appropriately adopted these credibility findings. Moreover, appellant’s arguments regarding his method of instruction are unpersuasive. The issue before the Board was not how the appellant instructed his students; rather, the Board considered whether the appellant engaged in unbecoming conduct when he allowed nearly identical responses on student submissions for the APA assessment. It is axiomatic that assessments must be completed independently and that students cannot merely recite responses written by the teacher, which would demonstrate only their ability to memorize a response and not the underlying skill that the assessment was designed to measure.

There is also nothing in the record to suggest that the Board’s decision to suspend appellant’s certificates for one year – based on the nature of the unbecoming conduct proven during the hearing at the OAL – was arbitrary, capricious or unreasonable. Accordingly, the decision of the State Board of Examiners is affirmed for the reasons expressed therein.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 2, 2020  
Date of Mailing: March 3, 2020

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<sup>1</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.