

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JILL KUBICKI : ORDER OF REVOCATION
_____ : DOCKET NO: 1112-153

At its meeting of December 16, 2011, the State Board of Examiners (Board) reviewed a decision forwarded by the Acting Commissioner of Education (Commissioner) that had dismissed Jill Kubicki from her tenured Teacher of the Handicapped position with the School District of Lawrence (Lawrence). *In the Matter of the Tenure Hearing of Jill Kubicki*, Docket No. 7-1/10 (Acting Commissioner's Decision, May 23, 2011). Kubicki currently holds a Teacher of the Handicapped certificate, issued in May 1992.

This case originated when Lawrence certified tenure charges of insubordination, failure to perform required duties, fabrication of records, prevarication, lack of professionalism and other just cause against Kubicki. After the case was transmitted to the Office of Administrative Law (OAL) for hearing, Administrative Law Judge (ALJ) Susan Scarola heard testimony commencing on May 7, 2010 and continuing for nine additional days. After receiving post-hearing submissions, the record closed on November 23, 2010 and the ALJ issued an Initial Decision on January 7, 2011. *In the Matter of the Tenure Hearing of Jill Kubicki*, OAL Docket No. EDU 284-10 (Initial Decision, January 7, 2011).

In that decision, ALJ Scarola found that, in September 2007, Kubicki knew that she had been transferred to another school but chose to ignore the transfer order, instead showing up at her old school on the first day and refusing to leave until union representatives and the Director of Student Services met with her. *Id.* at 85. The ALJ found that Kubicki's actions were disruptive to the orderly administration of the educational process. *Ibid.* She concluded that Kubicki was not truthful in denying knowledge of the transfer, that she refused to report as

directed and that her communications with her supervisors were combative and confrontational. *Ibid.* ALJ Scarola also found that despite being provided with ample time and repeated reminders, Kubicki failed to administer and grade Developmental Reading Assessments (DRA) for at least five students; that the scores for at least five students were fabricated or manufactured; that Kubicki was not being truthful when she told her superiors that she was not aware that the protocols/rubrics needed to be turned in; that her communications with her superiors were confrontational and that she was not truthful with regard to the DRA scores. *Id.* at 85-86. The ALJ also found that Kubicki failed to maintain a professional demeanor at times with parents, administrators and colleagues as directed in her Professional Improvement Plan (PIP). These behaviors included complaining to parents about the administration and responding with diatribes and ranting when the administration tried to discuss Kubicki's DRA scores and protocols. *Id.* at 86-87. ALJ Scarola concluded that Kubicki failed to prepare appropriate substitute lesson plans, refused to accept or review the Individual Education Plan (IEP) of a student who had been transferred into her class, continued in her failure to perform and submit DRAs in a timely manner, failed to submit IEP progress reports in a timely manner, and made inappropriate comments to parents regarding the collaboration of the Child Study Team. *Id.* at 87-89. In addition, the ALJ determined that Kubicki was "angry, hostile, demanding and obfuscating" in her interactions with both administrators and colleagues. *Id.* at 90. The ALJ found that "this was not a personality clash, as almost every teacher or administrator she was in contact with could not communicate rationally with her." *Ibid.* Kubicki was also disruptive of her fellow teachers and failed to follow school policy in the entering of grades. *Id.* at 90-91. She also failed to follow a Corrective Action Plan that was established for her which ordered her to check e-mails, provide progress reports, change substitute plans, make up parent meetings she

had missed, obtain technology assistance, and produce DRA protocols when requested by teachers, supervisors and administrators. *Id.* at 91-92.

After assessing the evidence and the testimony, ALJ Scarola concluded that Lawrence had met its burden of proof “relative to each of the charges it has filed against respondent.” *Id.* at 98. The ALJ further concluded that the district’s witnesses were consistent in their testimony, each describing Kubicki as “hostile, aggressive, demanding and unresponsive to reasonable requests for grades, progress reports, test scores, and student information.” *Ibid.* On the other hand, ALJ Scarola found Kubicki’s testimony to be “all over the lot. She would not answer questions put to her, but answered questions she would have preferred to have received.” *Ibid.* The ALJ concluded that Kubicki’s behavior “was inappropriate and inconsistent with the decorum and responsibility expected of a professional educator.” *Id.* at 99. Moreover, while some of the charges, standing alone, would not warrant dismissal, ALJ Scarola determined that “despite receiving orders and directives, being counseled and transferred, respondent showed no understanding that her behavior was not compatible with the mission of the public schools.” *Ibid.* Instead, the ALJ noted that Kubicki continued to deny personal responsibility and transfer the blame to others. *Ibid.* ALJ Scarola therefore concluded that because “it cannot be said that respondent’s behavior is an aberration, nor can it be said that it is likely that her behavior will change,” Kubicki’s conduct warranted her dismissal from her tenured position. *Id.* at 100.

In a decision dated May 23, 2011, the Acting Commissioner of Education (Commissioner) concurred with the ALJ that Lawrence had proven its charges of unbecoming conduct and other just cause against Kubicki: “the record amply establishes that respondent engaged in a continuing pattern of professional misconduct which included: ignoring or defying direct orders or suggestions of her supervisors; exhibiting anger, hostility and disrespectfulness

in her communications with fellow teaching staff members, at times in the presence of students; and, in a number of instances, categorically refusing to perform the duties required by her position. (Acting Commissioner's Decision, slip op. at 11). Accordingly, the Commissioner ordered Kubicki's removal from her tenured position in Lawrence and transmitted the matter to the Board for appropriate action regarding Kubicki's certificate. (Acting Commissioner's Decision, slip op. at 12).

Thereafter, on January 19, 2012, the Board issued Kubicki an Order to Show Cause as to why her certificate should not be revoked. The Order was predicated on the charges of insubordination, failure to perform required duties, fabrication of records, prevarication, lack of professionalism and other just cause that had been proven in the tenure hearing.

After finally securing an address for Kubicki, the Board sent her the Order to Show Cause by regular and certified mail on April 18, 2012. The Order provided that Kubicki's Answer was due within 30 days. Kubicki filed an Answer on May 10, 2012. In her Answer, Kubicki admitted that she had been the subject of a tenure hearing and that she had been dismissed from her tenured position. (Answer, ¶ 4). She denied that any improper conduct had been proven during the tenure proceeding. (Answer, ¶ 5). Kubicki also questioned whether the ALJ had received all of her information and alleged that the tenure hearing only proved that "the union and [district] are in bed together." (Answer, ¶ 7). Throughout her Answer, Kubicki denied that there was just cause to revoke her certificate. (Answer, ¶¶ 1-7).

Thereafter, pursuant to *N.J.A.C.* 6A:9-17.7(e), on May 22, 2012, the Board sent Kubicki a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Kubicki was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted

conduct unbecoming a certificate holder as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against her certificate. It also explained that upon review of the charges against her and the legal arguments tendered in her defense, the Board would determine if Kubicki's offense warranted action against her certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Kubicki was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Kubicki filed a written response on June 18, 2012. In that response she also requested to appear before the Board to provide testimony.

In her Hearing Response Kubicki noted that she had commendations in her annual evaluations with the exception of the 2008-2009 school year. (Hearing Response, p. 1). She noted that during the 2008-2009 school year she was the only elementary school resource center teacher who had a two building assignment and was bumped from room to room. (Hearing Response, p. 1). Kubicki also claimed that she was prevented access to the tools she needed to perform her job responsibilities, such as IEPs, access to classrooms or locking file cabinets. Kubicki maintained that her conduct was "just, appropriate, professional, and in accordance with laws and my Teacher of the Handicapped certification...." (Hearing Response, p. 1). She alleged that she was discriminated against for standing up for her special education students. (Hearing Response, p. 1).

In testimony before the Board, Kubicki stated that she made sure that her students received the services they needed and that would never change. She noted that she would always "advocate for kids" and that in her 18 years in the district she had received outstanding evaluations with the exception of her last year when she was "bounced around." She stated that

school should be ready on the first day and differential treatment of special education students was not acceptable.

The threshold issue before the Board in this matter, therefore, is whether Kubicki's conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of January 25, 2013, the Board considered the allegations in the Order to Show Cause as well as Kubicki's Answer, Hearing Response and testimony. The Board determined that no material facts related to Kubicki's offense were in dispute since she did not deny that she had lost her tenured position as a result of the tenure proceedings brought against her. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The Board must now determine whether Kubicki's conduct as set forth in the Order to Show Cause, represents just cause to act against her certificate pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

The Board 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*. As the ALJ noted and the Commissioner agreed, Lawrence sustained its charges of insubordination, failure to perform required duties, fabrication of records, prevarication, lack of professionalism and other just cause against Kubicki. The record was replete with instances which demonstrate that Kubicki's behavior lapses were not an aberration, and had a deleterious effect upon the smooth operations of the district. Moreover, Kubicki's negative interaction with superiors, colleagues and parents was correctly determined to have been unacceptable. There can be no dispute that Kubicki's conduct, in its totality, amply

demonstrated her unfitness to continue in her tenured position. Moreover, her unprofessionalism and unbecoming conduct warrant the strongest rebuke. The Board therefore determines that the appropriate response to Kubicki's unbecoming conduct is the revocation of her certificate.

Accordingly, on September 20, 2013, the Board voted to revoke Jill Kubicki's Teacher of the Handicapped certificate. On this 1st day of November 2013 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Kubicki's Teacher of the Handicapped certificate be effective immediately. It is further ORDERED that Kubicki return her certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Lawrence, 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.

RRH/MZ/th