

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
DEMETRIO SURACE : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 1314-243

At its meeting of July 24, 2014, the State Board of Examiners (Board) reviewed a decision forwarded by the Assistant Commissioner of Education (Commissioner) that had dismissed Demetrio Surace from his tenured physical education and health teacher position with the East Windsor Regional School District (East Windsor). *In the Matter of the Tenure Hearing of Demetrio Surace*, Docket No. 138-5/12 (Assistant Commissioner’s Decision, November 1, 2013). Surace currently holds a Teacher of Health and Physical Education Certificate of Eligibility, issued in June 2000, a Teacher of Health and Physical Education certificate, issued in June 2001 and a Supervisor certificate, issued in June 2013.

This case originated when East Windsor certified tenure charges against Surace alleging that he had engaged in a pattern of unbecoming conduct, which involved speaking to and about students in a derogatory, demeaning and humiliating manner, including the use of ethnic and racial slurs. Specifically, East Windsor alleged that in speaking to another staff member about a student, Surace stated “this little nigger better watch out;” referred to an Hispanic student as a “spic” during a conversation with a colleague; told one student he looked like a “mad Mexican” and referred to another student as a “Mexican;” made a comment to a female student that “behind those brown curls there’s a brain, maybe you should use it, or does it not work since your other half isn’t here since you guys share half a brain?;” made numerous inappropriate and hurtful comments to students, including calling one student “an idiot” and telling him to “shut up” and calling other students “stupid” or “slow.”

Surace also allegedly made a series of inappropriate comments to students who were misbehaving in a locker room, including saying “I am bigger than all three of you put together,

and I can take you all down.” At another time, students complained that Surace called them “lazy,” forced them to run as punishment and yelled at them. He had also touched a female student’s hair, called her lazy and told her she needed to do more than just dancing and stated “I hope I don’t get you in class next year.” On another occasion, after becoming upset about some students’ performances on a test, Surace yelled at the entire class that they were poorly educated and ignorant, that most of East Windsor was nonwhite and that there was a lot of teenage pregnancy, and that a certain percentage of the students’ parents did not attend college and could not help the students with their homework. The district also alleged that Surace was overheard by several students complaining to another teacher about his seventh period class and how bad the district was and using the word “fuck” within the earshot of students.

After the case was transmitted to the Office of Administrative Law (OAL) for hearing, Administrative Law Judge (ALJ) Elia Pelios heard testimony on October 23, 2012, December 14, 2012, January 16, 2013 and February 12, 2013. After receiving post-hearing submissions, the record closed on June 17, 2013 and the ALJ issued an Initial Decision on September 16, 2013. *In the Matter of the Tenure Hearing of Demetrio Surace*, OAL Docket No. EDU 004400-12 (Initial Decision, September 16, 2013).

In that decision, ALJ Pelios found that Surace had used racial and ethnic slurs when referring to students on numerous occasions, used demeaning and derogatory language toward students and used profanity within the earshot of students. *Id.* at 10-11. The ALJ also found that the district presented credible witnesses with nothing to gain by virtue of their testimony against Surace. *Id.* at 10. Judge Pelios also noted that Surace had received several warnings and had been given many “second chances” by his superiors, but he “failed to learn from his mistakes and continues to make inappropriate comments about race and socio-economic status to and about students.” *Id.* at 12.

After assessing the evidence and the testimony, ALJ Pelios concluded that “the record reflects that respondent has engaged in a consistent and repetitive pattern of unacceptable behavior despite ample warning and progressive discipline.” *Id.* at 14. The ALJ further found that given Surace’s “continual unwillingness to accept responsibility for his actions or to learn from the numerous chances he has been given to correct,” his tenure should be terminated. *Ibid.*

In a decision dated November 1, 2013, the Assistant Commissioner of Education (Commissioner) concurred with the ALJ that East Windsor had proven its charges of unbecoming conduct against Surace and that the district’s witnesses were more credible than Surace. (Assistant Commissioner’s Decision, slip op. at 2, 3). The Commissioner also agreed with the ALJ that Surace’s conduct warranted his dismissal from his tenured employment. (Assistant Commissioner’s Decision, slip op. at 3). Accordingly, the Commissioner ordered Surace’s removal from his tenured position in East Windsor and transmitted the matter to the Board for appropriate action regarding Surace’s certificates. (Acting Commissioner’s Decision, slip op. at 4).

Thereafter, on September 19, 2014, the Board issued Surace an Order to Show Cause as to why his certificates should not be revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Surace the Order to Show Cause by regular and certified mail on September 23, 2014. The Order provided that Surace’s Answer was due within 30 days. Surace filed a response on September 29, 2014.

In that Answer, Surace admitted that tenure charges were certified against him, but denied the allegations of unbecoming conduct. (Answer, ¶3). He stated that the Commissioner’s decision “speaks for itself” and admitted that he had been dismissed from his tenured position. (Answer, ¶¶ 6, 7).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.7(e)*, on November 25, 2014, the Board sent Surace a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Surace was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against his certificates as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Surace's offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Surace was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Surace filed a written response on December 8, 2014. Surace did not ask to appear before the Board.

In his Hearing Response, Surace argued that his behavior warranted suspension, but not revocation of his certificates. (Hearing Response, p. 1). He noted that while inappropriate comments to students might constitute conduct unbecoming, suspension was a more appropriate penalty. (Hearing Response, p. 2). He also noted that his use of the two most egregious racial slurs, on one occasion each, was made not to students, but rather, to fellow staff members. (Hearing Response, p. 3). Surace therefore argued that those words could not be said to have "as deleterious an effect on the maintenance of discipline and the proper administration of the school system as if they had been made to students." (Hearing Response, p. 3). Surace therefore argued that the "draconian penalty of revocation should not be imposed." (Hearing Response, p. 3).

The threshold issue before the Board in this matter, therefore, is whether Surace's conduct constitutes conduct unbecoming a certificate holder. At its meeting of January 23, 2015, the Board considered the allegations in the Order to Show Cause as well as Surace's Answer and

Hearing Response. The Board determined that no material facts related to Surace's offense were in dispute since he did not deny that he had engaged in the conduct as determined by Judge Pelios in the tenure proceedings. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.7(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 Surace's conduct as set forth in the Order to Show Cause, represents just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.5*. 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:9B-4.5*. As the ALJ noted and the Commissioner agreed, East Windsor sustained its charges of unbecoming conduct against Surace. The record was replete with instances which demonstrate that Surace's use of derogatory language to and about students was not an aberration and did not change despite repeated warnings. There can be no dispute that Surace's conduct, in its totality, amply demonstrated his unfitness to continue in his tenured position. Furthermore, it is well settled that unfitness to teach may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. Of Educ.*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943), *aff'd* 131 *N.J.L.* 326 (E&A 1944). The Board therefore determines that the appropriate response to Surace's unbecoming conduct is the revocation of his certificates.

Accordingly, on January 23, 2015, the Board voted to revoke Demetrio Surace's Teacher of Health and Physical Education Certificate of Eligibility and his Teacher of Health and Physical Education and Supervisor certificates. On this 12th day of March 2015 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Surace's certificates be effective immediately. It is further ORDERED that Surace return his certificates

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.

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Robert R. Higgins, Secretary  
State Board of Examiners

RRH/MZ/th  
Date of Mailing:

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