

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
STEVEN E. ROTH, JR. : ORDER OF SUSPENSION
_____ : DOCKET NO: 1516-129

At its meeting of October 30, 2015, the State Board of Examiners (Board) reviewed a decision forwarded by the Commissioner of Education (Commissioner) that had dismissed Steven E. Roth, Jr. from his tenured position as a special education teacher with the Gloucester County Special Services School District (Gloucester). *In the Matter of the Tenure Hearing of Steven E. Roth, Jr.*, Dkt. No. 358-12/11 (Commissioner’s Decision, June 25, 2012). Roth currently holds a Teacher of the Handicapped certificate, issued in August 2001.

The case originated when Gloucester certified tenure charges against Roth alleging unbecoming conduct, neglect of duty and verbal abuse of a student. Gloucester alleged that Roth had disparaged, confronted and intimidated one of his students, J.A., in the presence of his classmates. In a cell phone video that J.A. had taped, Roth is seen and heard verbally berating J.A. for not applying himself and making comments that the public will not care that J.A. is “special.” When J.A. asks Roth to stop calling him “special,” Roth chastises him and tells him he is not normal. Roth also approached J.A.’s desk several times and tells J.A. that if he has anything he wants to say to Roth outside of school, Roth will “kick his ass to kingdom come until he is 80 years old” and that he will meet J.A. at any time. Roth also tells J.A. that he will never make it back to his sending district and that he would never recommend J.A. to go back. Roth’s interaction with J.A. occurred in front of a classroom of students.

In his Decision dated June 25, 2012 (which is incorporated herein by reference), the Commissioner concurred with the Administrative Law Judge’s (ALJ) conclusion that Gloucester had proven that Roth was guilty of unbecoming conduct. Although the Commissioner

acknowledged the deference to be accorded the ALJ's credibility determinations, the Commissioner also noted that credibility did not play a major role in the case since the incident was recorded and neither party was contesting the fact that Roth had engaged in unbecoming conduct. The Commissioner disagreed with the ALJ that the appropriate penalty for Roth's conduct was a suspension without pay, the withholding of his increments for two years, his mandatory attendance at an anger management training course and his written apologies to J.A. and his parents, the other students in the class and the Gloucester board.

The Commissioner determined that the mitigating factors, i.e., Roth's previously unblemished record, the fact that the incident was not premeditated, the fact that prior to the incident J.A. had been "badgering" Roth and Roth's expression of remorse, did not outweigh the gravity of Roth's conduct. The Commissioner found that the video showed the sustained use of demeaning language, including profanity; aggressive body language; intimidation and threats; and taunting and tirades about issues unrelated to those properly addressed in a classroom. The Commissioner found Roth's lack of judgment and control to be prolonged and acute and concluded that the ALJ's penalty must be modified given the egregiousness of the conduct. The Commissioner therefore ordered Roth dismissed from his tenured employment.

Roth was dismissed from his tenured employment with Gloucester as a result of the unbecoming conduct proven in the tenure proceeding and the Commissioner transmitted the matter to the Board for its review. Roth appealed the Commissioner's Decision to the New Jersey Superior Court, Appellate Division, which, in a decision dated July 1, 2013, affirmed the Commissioner's decision to remove Roth from his tenured position. *In the Matter of the Tenure Hearing of Steven E. Roth, Jr.*, Dkt. No. A-5742-11T2 (App. Div. July 1, 2013) (unpublished opinion).

Upon review of the above information, at its December 10, 2015 meeting, the Board voted to issue Roth an Order to Show Cause as to why his certificate 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 Roth the Order to Show Cause by regular and certified mail on December 16, 2015. The Order provided that Roth had 30 days to respond. On January 11, 2016, Roth submitted an Answer. In that Answer he admitted that tenure charges had been brought against him and that the Commissioner had issued a decision against him but denied that he had engaged in unbecoming conduct. (Answer, ¶¶ 2, 3). Roth also claimed that the mitigating factors in the case outweighed his conduct and denied that the penalty imposed by the Commissioner was reasonable or appropriate. (Answer, ¶¶ 5, 6). Roth also denied that there was just cause to revoke his certificate. (Answer, ¶ 9).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on February 1, 2016, the Board sent Roth a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Roth 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 his certificate. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Roth's offenses warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Roth was also offered the opportunity to appear before the Board to provide testimony on the sanction issue.

The certified mail copy was returned as “Unclaimed” and the regular mail copy was not returned. Roth did not respond.

The threshold issue before the Board in this matter is whether Roth’s conduct constitutes conduct unbecoming a certificate holder. Since Roth failed to respond to the hearing notice, at its meeting of May 20, 2016, the Board considered only the allegations in the Order to Show Cause as well as Roth’s Answer. The Board determined that collateral estoppel applied as to the facts found in the tenure hearing and therefore no material facts related to Roth’s offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17, 2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings). Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Roth’s conduct, as set forth in the Order to Show Cause, provides just cause to act against his certificate pursuant to *N.J.A.C. 6A:9B-4.4*. 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-4.4*. “Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff’d*, 131 *N.J.L.* 326 (E & A 1944). Roth’s conduct in engaging in a prolonged verbal dispute with a student, as well as using demeaning language to refer to the student in front

of his classmates, is behavior that indicates a serious lapse in judgment. However, because it was an isolated event, and Roth has had an otherwise unblemished teaching career, the Board believes that only suspension, albeit a lengthy one, is warranted here. The Board therefore concludes that the appropriate response to Roth's breach is a three-year suspension of his teaching certificate.

Accordingly, on May 20, 2016, the Board voted to suspend Steven E. Roth Jr.'s Teacher of the Handicapped certificate for a period of three years, effective immediately. On this 23rd day of June 2016 the Board voted to adopt its formal written decision and it is therefore ORDERED that the suspension of Roth's certificate be effective immediately. It is further ORDERED that Roth return his certificate to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

RRH/MZ/th

Date of Mailing:
via certified and regular mail

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