

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
SHELLIE MACKSON : ORDER OF SUSPENSION
_____ : DOCKET NO: 1314-251

At its meeting of July 24, 2014, the State Board of Examiners (Board) reviewed information it had received from the Passaic County Technical Institute (PCTI) regarding Shellie Mackson. Mackson resigned from his tenured position after PCTI certified tenure charges against him alleging unbecoming conduct. The district had alleged that Mackson had made inappropriate comments to students and made unwanted physical contact with another staff member and a student.

Specifically, in the tenure charges, which are incorporated herein by reference, the district alleged that Mackson made inappropriate comments to student, A.C., saying, “Wow. You are very attractive,” and “You are fine.” Mackson also allegedly stroked student K.M.’s hair and hugged her in a manner which made her feel uncomfortable and kissed her on the lips. Mackson also allegedly whispered to student N.R., “You are so damn fine.”

PCTI also alleged that Mackson made unwanted physical contact with a female faculty member, Ms. Tomko,¹ in the presence of another faculty member and students. Mackson allegedly came up behind Tomko, as she was leaning over a desk, pressed his body against her and said, “What a nice leaning post.”

The district also alleged that Mackson had made unwanted physical contact with student S.W. by pulling her pants out from the back while she was in formation; stuck his middle finger

¹ Although the tenure charges alleged that the female faculty member was Tomko, it was actually a faculty member named Kerry Shelby.

up at student J.C. in the presence of other students, cursed at student C.M. and patted her on the buttocks, and touched student R.M. on the buttocks while helping her put on her uniform belt.

Mackson continued to engage in inappropriate behavior even though he had received a prior suspensions and reprimands.

Mackson currently holds a Teacher of Military Science certificate, issued in September 2005. After reviewing the above information, at its October 23, 2014 meeting, the Board voted to issue an Order to Show Cause to Mackson as to why his certificate should not be revoked.

The Board sent Mackson the Order to Show Cause by regular and certified mail on October 27, 2014. The Order provided that Mackson must file an Answer within 30 days. Mackson responded on December 8, 2014. In his Answer, Mackson denied all conduct attributed to him in the Order to Show Cause. (Answer, ¶¶ 4-7). He also stated that his conduct “did not warrant the revocation of his certificates” and “had no affect [*sic*] on the maintenance of discipline and the proper administration of the school system.” (Answer, Affirmative Defenses, ¶¶ 1, 2). Mackson also maintained that he was not “unfit” to hold his certificates and that the totality of the allegations contained in the tenure charges and the Order to Show Cause were “false and without merit.” (Answer, Affirmative Defenses, ¶¶ 3, 4).

Since there were material facts in dispute, the Board transmitted the matter to the Office of Administrative Law (OAL) on February 12, 2015 for hearing as a contested case. After the case was transferred to her from another Administrative Law Judge (ALJ), ALJ Carol I. Cohen heard the matter on August 23, September 8, October 13 and December 8, 2016. The record closed on April 17, 2017, and the ALJ issued an Initial Decision on July 13, 2017. *In the Matter of the Certificates of Shellie Mackson*, Dkt. No. EDE 02314-15 (Initial Decision, July 13, 2017).

After reviewing the testimony and the record, ALJ Cohen found that Mackson was very particular about the proper fitting of a uniform and was in charge of inspecting the cadets' uniforms as part of his duties as a NJROTC instructor at PCTI. (Initial Decision, slip op. at 29.) In 2004, in his first months of teaching, Mackson had cursed at student C.M. after she brought her uniform in a bag to school on uniform inspection day. *Id.* at 30. In another incident that year, the ALJ determined that Mackson had given the middle finger to student J.C. after he was disruptive in class. *Ibid.* Mackson did apologize for his behavior in both incidents. *Ibid.* During an inspection in 2005, when S.W. told Mackson she did not know where to put her uniform ball cap, Mackson took her cap and slid the bill into her waistband. Mackson apologized to S.W.'s father after he called the school to complain. *Ibid.* During a uniform inspection in 2003-04, Mackson asked R.M. if she needed assistance with her belt. She put on the belt herself and Mackson placed his hand on her buttocks and said "firm" or something to that effect. *Ibid.* R.M. testified that she did not think the touch was "sexual in nature." *Id.* at 31. The ALJ also found that, during the 2012-13 school year, Mackson would comment on A.C.'s hair and tell her it did not fit properly under her uniform hat. On one occasion, Mackson lifted up A.C.'s hair to demonstrate how it should be worn to fit under her hat. *Ibid.* This action made A.C. uncomfortable and "contravened school policy and warnings by the administration not to touch a student." *Ibid.* A.C. did not like her clothes fitting tightly and complained to Mackson about her uniform, but he told her that her "pants fit her fine." *Ibid.* After A.C. complained to her parents about Mackson placing his hands in her hair, her father contacted the school regarding Mackson's behavior. Subsequent to that incident, A.C. quit the NJROTC program. *Ibid.* ALJ Cohen also determined that Mackson pressed the front of his body against Kerry Shelby's when she was leaning over a desk and said, "What a nice leaning post." *Ibid.* This

made Shelby feel uncomfortable and she immediately reported the incident to school authorities. *Ibid.*

ALJ Cohen asserted that “In this case, credibility is the determining factor in deciding whether Mr. Mackson is guilty of the charges leveled against him.” *Id.* at 38. After analyzing the testimony, the ALJ found that K.M.’s testimony against Mackson was too contradictory to give any credence to her allegations. *Id.* at 42-44. The ALJ concluded that Mackson was guilty of improper behavior for “giving a student the finger” and cursing at a student. *Id.* at 48. She added that those infractions were “somewhat mitigated by the fact that he had recently joined the teaching profession, and his training was in the military, which was a whole different type of environment.” *Ibid.* ALJ Cohen also concluded that Mackson’s actions with regard to R.M. allowed his military training to supersede his need to behave like a teacher. *Ibid.* Even though the ALJ conceded that Mackson’s comments regarding R.M.’s butt being firm “might have related to the proper way to wear her uniform,...it was inappropriate in referring to a teenage student.” *Ibid.* ALJ Cohen also ruled that Mackson did not act appropriately when he slid by or hugged a fellow teacher. *Id.* at 48-49. As for Mackson’s conduct with regard to A.C., the ALJ found that he “failed to adhere to the prior warnings he had received not to physically touch a student when he pulled her hair back to show how it could fit under her cap. *Id.* at 49.

In her decision, ALJ Cohen found that the Board had proven that Mackson had engaged in “inappropriate behavior toward certain students and staff.” *Id.* at 50-51. However, the ALJ further determined that Mackson’s behavior did not rise “to such a level of gravity warranting license revocation.” *Id.* at 51. Instead, ALJ Cohen ordered that Mackson’s certificate should be suspended for two years and ordered him to attend mandatory sexual-harassment training and

counseling. *Ibid.* The Deputy Attorney General (DAG) representing the Board filed Exceptions in the case and Mackson filed Reply Exceptions.

In his Exceptions, the DAG argued that the Initial Decision should be modified and an order of revocation imposed instead. (Exceptions, p. 1). The DAG argued that Mackson engaged in unbecoming conduct when he cursed at a student and gave another student “the finger;” when he repeatedly made sexually suggestive comments to students and faculty and when he repeatedly violated the prohibition on touching students and faculty. (Exceptions, pp. 15-17, 17-18, 19-21). According to the DAG, any one of those behaviors, standing alone, warranted the revocation of Mackson’s certificate and, when coupled together, demanded it. (Exceptions, p. 15). Moreover, the DAG argued that the Board lacked the authority to order sexual harassment training and that such training was unlikely to be effective given Mackson’s inability to learn from the sexual harassment training he had previously received from PCTI. (Exceptions, pp. 21-22). The DAG therefore argued that the Initial Decision should be modified as to penalty and that an order revoking Mackson’s certificate be issued. (Exceptions, p. 22).

In his Reply Exceptions, Mackson argued that the Board’s Exceptions did not specify any findings of fact or credibility determinations from the Initial Decision with which the Board disagreed. (Reply Exceptions, pp. 1, 5). Mackson also noted that the Board did not assert that ALJ Cohen ignored applicable law or misapplied the law. (Reply Exceptions, pp. 1, 5). Mackson therefore claimed that “the Board’s arguments are unpersuasive and insufficient grounds [exist] to disregard the Judge’s decision not to revoke the teaching certificate of Mr. Mackson.” (Reply Exceptions, p. 1). Mackson argued that the Board’s claim that his cursing at a student and giving a student “the finger,” without more, warranted revocation, was disingenuous as it was undisputed he expressed remorse for this conduct, the incidents happened

early in his career and he received minimal punishment for this behavior. (Reply Exceptions, p. 6). Mackson also disputed the Board's characterization of his comments to students and faculty as "sexually suggestive" and stated that the Board mischaracterized ALJ Cohen's findings in this regard. (Reply Exceptions, pp. 6-8). Mackson further argued that, since the decision to revoke is discretionary, and the Board "fail[ed] to demonstrate that the physical conduct that was found to be proven, or the comments made, require revocation," the ALJ's decision should be adopted. (Reply Exceptions, p. 8). Finally, Mackson argued that even if the ALJ's Order requiring him to undergo Sexual Harassment training was improper, there was no reason to "disturb any other portion of the decision." (Reply Exceptions, p. 9).

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of November 1, 2017, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision and the other submissions, the Board voted to adopt the Initial Decision with modification as to penalty.

"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. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, after assessing the evidence and the credibility of the witnesses, ALJ Cohen concluded that the Board had demonstrated that Mackson had engaged in inappropriate behavior but that such behavior did not warrant revocation. (Initial Decision, slip op. at 51). After reviewing the entire record, the Board agrees with the ALJ's assessment that a two-year suspension is the appropriate penalty

here. However, as the Board is not statutorily authorized to order Mackson to attend sexual-harassment training and counseling, that aspect of the Initial Decision is rejected.

Accordingly, on November 1, 2017, the Board voted to adopt the Initial Decision with modification as to penalty and ordered the suspension of Mackson's certificate. On this 8th day of December 2017, the Board formally adopted its written decision to adopt the Initial Decision with modification as to penalty in this matter, and it is therefore ORDERED that Shellie Mackson's Teacher of Military Science certificate is hereby suspended for two years, effective immediately. It is further ORDERED that Mackson 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.