

SBE #0304-186
SB # 44-04

IN THE MATTER OF THE REVOCATION :
OF THE CERTIFICATES OF DR. NEYEMBO : STATE BOARD OF EDUCATION
MIKANDA BY THE STATE BOARD OF : DECISION
EXAMINERS. :

Decided by the State Board of Examiners, February 26, 2004

Decision on motion by the State Board of Examiners, September 27, 2004

For the Appellant, Dr. Neyembo Mikanda, pro se

For the Respondent, Cindy Campbell, Deputy Attorney General (Peter C.
Harvey, Attorney General of New Jersey)

In December 2002, the Board of Education of the City of Camden certified tenure charges against Dr. Neyembo Mikanda (hereinafter "respondent"), a tenured teaching staff member, alleging chronic and excessive absenteeism, abuse of sick leave, neglect of duty, incapacity and abandonment of position. The respondent resigned from his tenured position prior to filing an answer to the charges, and the Commissioner dismissed the tenure charges as moot. The Commissioner referred the matter to the State Board of Examiners for any action it deemed appropriate against the respondent's certificates.

On June 12, 2003, based on the conduct alleged in the tenure charges, the Board of Examiners voted to issue an Order to Show Cause why the respondent's

certificates should not be suspended or revoked. That Order was mailed to the respondent on August 4, 2003 by regular and certified mail. The respondent did not file an answer to the Order or otherwise respond. Nor did he respond to a second copy of the Order which was sent to him by regular and certified mail on December 23, 2003. As a result of the respondent's failure to file an answer to the Show Cause Order, the Board of Examiners deemed the charges admitted, and, on February 26, 2004, it revoked the respondent's certificates. In so doing, the Board of Examiners stated:

...Mikanda's chronic and excessive absenteeism greatly affected the students in his charge. Whatever the reasons for his absences, they adversely affected the continuity of instruction to which the students were entitled. This unexcused, excessive absenteeism provides the Board a sufficient predicate to take action against his teaching certificates.

In determining the appropriate sanction in this case, the Board of Examiners is mindful that Mikanda's chronic and excessive absenteeism from his duty as a teacher has negatively impacted the education provided to the children of Camden. Moreover, Mikanda's neglect of his instructional duties when he was in school and his failure to respond to the Board of Examiners although given numerous opportunities to do so, further illustrates his disregard of his responsibilities to the teaching profession. Consequently, the Board of Examiners believes that the appropriate sanction in this case is the revocation of Mikanda's teaching certificates.

State Board of Examiners' Decision, slip op. at 3.

On July 27, 2004, the respondent filed a "motion to reopen" the State Board of Examiners' decision, which the Board of Examiners deemed to be a motion for reconsideration. On September 27, 2004, it dismissed the motion as untimely.

The respondent filed the instant appeal to the State Board of Education.

After a thorough review of the record, we affirm the decision of the Board of Examiners.

The record reveals that the Board of Examiners mailed the Order to Show Cause to the respondent by regular and certified mail on two separate occasions. Although the certified letters were returned marked "unclaimed," the letters sent by regular mail were not returned, and the respondent did not respond to those notices. Nor did he respond to a notice from the Board of Examiners dated February 18, 2004 informing him that it would be determining whether to revoke his certificates at its February 26 meeting. There is no indication that the respondent did not receive that letter, and he does not claim that he did not receive it. Under the circumstances, we conclude that the Board of Examiners acted properly in deeming the charges against the respondent to be admitted for purposes of those proceedings.

N.J.A.C. 6A:9-17.5 provides that the Board of Examiners may revoke or suspend a certificate on the basis of inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Given the language of the regulation, we reject as entirely without merit the respondent's contention that his certificates should not be revoked since he was not convicted of a crime requiring forfeiture of his certificates or employment.

The charges in this case indicate that the respondent was absent from school 109 days during the 1997-98 school year, 185 days during 1998-99, 136 days during 1999-2000, 140 days during 2000-01 and 185 days during 2001-02. The charges further state that the respondent took multiple sick days just prior to scheduled holidays without submitting the required medical certification, failed to submit lesson plans, and

neglected his instructional duties by engaging in unauthorized conduct during school hours.

In his brief in support of the appeal, the respondent does not deny the number of absences alleged by the Board. Rather, he generally counters that “[t]he allegation of chronic and excessive absenteeism is false – a fabrication which has never been proved,” Appeal Brief, at 5, and he charges that the “accusations are solely intended to wrongly blemish my character,” *id.* at 2. The respondent further contends, without providing any supporting documentation, that the absences were the result of “severe anxiety” brought about by a “hostile work environment,” along with a series of automobile accidents and illnesses.

Under the circumstances, we conclude that the respondent’s absences over a five-year period were chronic and excessive and that they constituted unbecoming conduct and just cause warranting the revocation of his certificates. The respondent has not denied the number of absences alleged by the Camden Board and has provided nothing more than unsubstantiated allegations regarding those absences. We fully agree with the Deputy Attorney General representing the Board of Examiners, who points out:

[The respondent’s] excessive absenteeism greatly affected the students in his charge because it adversely affected the continuity of instruction to which the students were entitled. It illustrates his disregard of his responsibilities to the teaching profession....Based upon Dr. Mikanda’s complete disregard for his responsibilities as a teacher, the Examiners properly found that Dr. Mikanda’ [sic] unbecoming conduct warrants revocation of his teaching certificates.

Answer Brief, at 11.

Accordingly, we affirm the decision of the State Board of Examiners to revoke the respondent's certificates.

March 2, 2005

Date of mailing _____