

#405-10A (OAL Decision: [http://lawlibrary.rutgers.edu/oal/html/initial/ede05320-05\\_1.html](http://lawlibrary.rutgers.edu/oal/html/initial/ede05320-05_1.html))  
(SBE Decision: <http://www.nj.gov/education/legal/examiners/2009/feb/0304-277.pdf>)

STATE BOARD OF EXAMINERS DKT. NO. 0304-277  
OAL DKT. NO. EDE 5320-05  
COMMISSIONER APPEAL NO. 3-3/09A

IN THE MATTER OF THE TEACHING : COMMISSIONER OF EDUCATION  
CERTIFICATES OF RUTH MEGARGEE,  
NEW JERSEY STATE DEPARTMENT : DECISION  
OF HUMAN SERVICES.  
\_\_\_\_\_:

Appellant challenges the determination of the New Jersey State Board of Examiners (Board of Examiners) that her actions warranted the suspension of her teaching certificates for one year.

The facts underlying this controversy will not be completely detailed in this decision, as they are amply set forth in the various adjudications – including a decision by the Superior Court, Appellate Division – of the tenure charges brought against appellant. The Acting Commissioner has, however, thoroughly reviewed those facts, the legal arguments made below, and the evidence and legal discussion presented in the proceedings before the Board of Examiners. Upon consideration of same, as well as the parties’ appellate briefs and appendices, the Acting Commissioner concurs with the Board of Examiners’ holdings.

An examination of appellant’s papers reveals little of merit. First, the Acting Commissioner finds that appellant’s contention that the Board of Examiners bore – and did not sustain – the burden of proof is a red herring. The finding of appellant’s unbecoming conduct was established in the tenure proceeding. The Board of Examiners provided appellant with the opportunity to present information that might militate against action on her certificates. To the extent that the Board bore the burden to show that appellant’s unbecoming conduct warranted a one-year suspension of her certificate, it did so by identifying as grounds appellant’s

intractability and the effect it had upon the Department of Human Services' (DHS) ability to effectively deliver educational services.

Second, the Acting Commissioner rejects appellant's suggestion that the Board of Examiners was required to prove that she was unfit to instruct. Under *N.J.A.C. 6A:9-17.5*, a finding of unbecoming conduct may serve as the basis for revocation or suspension of certification. As referenced above, in the tenure proceeding against her, appellant was found to have engaged in unbecoming conduct – not due to instructional incompetence, but rather to her unreasonable rejection of teaching assignments to the detriment of the DHS's ability to efficiently deliver instructional services. That is unquestionably grounds for a finding of unbecoming conduct, even where medical issues exist. *See, e.g. In the Matter of the Tenure Hearing of Frances R. Metallo, School District of the City of Union City, Hudson County, Commissioner Decision No. 244-03, May 12, 2003; In the Matter of the Certificates of Frances Metallo, State Board of Examiners Dkt. No. 405-123 (May 5, 2005).*<sup>1</sup> Hence, no finding of poor pedagogy was or is necessary.

The Commissioner's and Appellate Division's finding of unbecoming conduct based on excessive absenteeism is the law of the case and will not be relitigated here. The Board of Examiners independently and justifiably found that appellant's unbecoming conduct rose to a level that supported suspension of her certification.

Third, appellant suggests that because respondent – at the hearing in the Office of Administrative Law (OAL) on behalf of the Board of Examiners – did not present witnesses to rebut her testimony, the Administrative Law Judge (ALJ) and Board should have found in her

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<sup>1</sup> The Acting Commissioner rejects appellant's argument that *Metallo* can be distinguished because in that case, respondent – in addition to being charged with excessive absenteeism – was also accused of suggesting improper tactics to students participating in a mathematics competition. In both the Commissioner of Education and State Board of Examiners decisions, however, the respective arbiters found that the evidence of Metallo's excessive absenteeism independently supported a finding of unbecoming conduct. Commissioner Decision at 18 and Board of Examiners Decision at 4.

favor. However, the ALJ and Board correctly determined that the evidence about appellant's unbecoming conduct supported a certificate suspension, her testimony about her teaching record and her frame of mind notwithstanding. The Acting Commissioner further notes that appellant was given a significantly shorter suspension than Metallo received, despite respondent's demands for a greater penalty.

In summary, the Acting Commissioner is not persuaded that there is any basis to disturb the decision of the Board of Examiners suspending her certificates for a year. Accordingly, it is affirmed for the reasons set forth therein, and the appeal is dismissed.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 23, 2010

Date of Mailing: September 24, 2010

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<sup>2</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.