

STATE BOARD OF EXAMINERS DKT. NO. 0607-271
AGENCY DKT NO. 5-6/12A

IN THE MATTER OF THE :
SUSPENSION OF THE CERTIFICATE : COMMISSIONER OF EDUCATION
OF SHERYL GLEIM BY THE : DECISION
STATE BOARD OF EXAMINERS. :

Order of Suspension by the State Board of Examiners, May 17, 2012

For the Respondent-Appellant, Alan L. Zegas, Esq.

For the Petitioner-Respondent State Board of Examiners, Caroline Jones, Deputy Attorney General (Paula T. Dow, Attorney General of New Jersey)

This case involves an appeal of the State Board of Examiners' (Board) Order of May 17, 2012, suspending appellant Sheryl Gleim's teacher of Elementary School Certificate for one year.¹ On appeal, the appellant maintains that the Board's decision to suspend her for one year was arbitrary, capricious and unreasonable because it is an unduly harsh penalty.

This matter was referred to the Board in the aftermath of tenure charges that were filed against the appellee by her previous employer, the Green Brook Board of Education. The appellant resigned after the tenure charges were filed and she is currently employed by the Plainfield School District. Following a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge found that the appellant engaged in unbecoming conduct and insubordination for the following behavior that occurred between 2000 and 2006: failure to comply with administrators' directives when she was told on more than one occasion not to direct children to phone home to report missing homework; violating school policy for not getting parental permission before showing a PG rated film, Labyrinth, to her students; isolated

¹ On July 26, 2012, the Board granted appellant's motion to stay the suspension pending her appeal to the Commissioner.

loss of her temper when she was confronted by her principal regarding the showing of Labyrinth; one instance of lateness upon returning to school from lunch; two adequately explained instances of improper cell phone use; allowing a sixth grader to leave the building unescorted to retrieve something from the appellant's car; and viewing a dating website that did not contain any graphic material on the school's computer when children were not present. Although the ALJ found that the appellant was guilty of insubordination and unbecoming conduct, she recommended that the appellant retain her teaching certificate because the evidence as a whole falls far short of demonstrating that the appellant lacks the ability or temperament to be an effective teacher. Thereafter, the Board adopted the Initial Decision of the ALJ, but modified the penalty to include a one-year suspension of the appellant's teaching certificate.

In her brief, the appellant maintains that the Board's decision to suspend her for one year was arbitrary, capricious and unreasonable. Specifically, the appellant argues that the Board acted in an arbitrary and capricious manner when it failed to give the requisite deference to the ALJ's credibility determinations, and in fact the Board did not even allude to the ALJ's credibility findings in the Order of Suspension. The appellant notes that in the Initial Decision, the ALJ repeatedly pointed out how she favored the credibility of the appellant over the three administrators who testified against her at the hearing. For example, the appellant cited the following finding by the ALJ:

The Examiners offered the testimony of three school administrators from Green Brook, each of whom spoke to the various allegations against Gleim, but with testimony that either relied on hearsay or revealed a less than vivid recollection of the events. Conversely, Gleim shared details that put the charges in context; and her testimony made sense and was convincing. Gleim gave much of her testimony through tears, and the pain that this proceeding was causing her was palpable. It was apparent that when her performance was less than stellar this hurt and frustrated her; in hindsight she appeared to know where she could have done better. Gleim was candid about occasional violations of school rules. She pointed out that some of the policies she violated were widely breached, but never contended that this should excuse her conduct. [Initial Decision, page 3]

As a result, the appellant alleges that the Board erred in ignoring the ALJ's credibility determinations concerning the appellant and the administrators who testified against her at the hearing when the Board rendered the one-year suspension.

The appellant also contends that the Board erred in imposing the drastic sanction of a one-year suspension which will likely result in her current employer – the Plainfield School District – terminating her employment. The appellant argues that the penalty imposed by the Board far outweighs any misconduct that she may have committed. Again the appellant cites to the Initial Decision to support her contention that the Board's penalty is excessive:

The Board of Examiners urges that Gleim's teaching certificate must be revoked. I vehemently disagree. The Examiners' case is built upon a series of unrelated instances of misconduct, many of which were unproven, and many of which the Examiners did not even attempt to prove. None of the proven charges, standing alone, are of sufficient gravity to warrant the relief the Examiners seek. I am well aware that our case law has recognized that unfitness to teach is best evidenced by a "series of incidents." 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). But Redcay envisioned a "series of incidents" that built to an inescapable conclusion of unfitness. Here, the Examiners have created a "series of incidents" by providing a few lapses in judgment over a long successful career, and then embedding them in a litany of unproven or trivial complaints. This is not the "series of incidents" to which our Commissioner of Education and courts refer when they rely upon Redcay. [Initial Decision, page 23]

The appellant argues that the determination by the ALJ with respect to the nature of the charges emphasizes that the conduct proven does not deserve a one-year suspension.

The appellant also contends that even if it was determined that she occasionally used poor judgment, in applying the guidelines of *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967) the conduct in this case does not warrant a one-year suspension. The appellant points out that she received a series of performance reviews that recommended a salary increment, she has had an otherwise unblemished career and the ALJ found her to be a sincere and credible witness. Additionally, the appellant argues that the ALJ determined that there was plenty of evidence in the record to support the conclusion that the charges brought against her were at least partially

the result of an animus toward her by the school administrators. Finally, the appellant cites to prior case law that she contends is analogous to her case where the Board did not impose any punishment on the teaching staff member. Therefore, the appellant requests that the Commissioner reverse the Board's decision to suspend her teaching license for one year and instead adopt the recommendation of the ALJ that appellant's conduct does not merit the imposition of any suspension.

In reply, the Board maintains that the decision to suspend the appellant for one year was not arbitrary, capricious or unreasonable, and as such it should be affirmed by the Commissioner. The Board stresses that it did not reject or modify any findings of fact, nor any of the ALJ's conclusions with respect to the findings of unbecoming conduct and insubordination, and the only modification of the decision was the penalty imposed. Pursuant to *N.J.A.C. 1:1-18.6*, the Board is free to "reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to the issues of credibility of lay witness testimony..." As a result, the Board asserts that it was fully authorized to use its discretion and expertise to impose a greater penalty than was recommended by the ALJ for the unbecoming conduct and insubordination. The Board also argues that the appellant's claim that the Board failed to give the ALJ's credibility determinations due deference is incorrect. The Board contends that it adopted the factual determinations and legal conclusions of the ALJ which necessarily embody her own findings of fact and credibility. Further, the Board maintains that the issue of the appropriate penalty does not rely on credibility determinations.

The Board also emphasizes that its modification of the penalty imposed on the appellant was not arbitrary, capricious or contrary to law because the reasons for the modification of the ALJ's recommended penalty were clearly stated in the Order of Suspension. The Board points out that it properly found that the ALJ erred because, despite finding that

appellant's behavior was insubordinate and constituted unbecoming conduct, she wrongfully determined that the appellant did not deserve a penalty since no students were adversely affected. The Board contends that a lack of impact does not negate the fact that the appellant engaged in inappropriate behavior and her insistence on violating administrative directives and policies merits a penalty regardless of its direct impact on students. Moreover, the Board contends that it was correct in choosing not to simply ignore the appellant's proven conduct because the appellant's actions clearly demonstrate a lack of restraint and self-control. Further, the Board asserts that the penalty imposed was reasonable because the appellant's failure or recalcitrance to bring her conduct into the norms expected of her by her employer, and to persistently disregard their directives, evidences a lack of maturity and control required by a certified teacher. Finally, the Board also maintains that the cases cited by the appellant are not analogous to the instant appeal because here it was proven that the appellant engaged in conduct unbecoming and insubordination.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Examiners so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*.

After full consideration of the record and all of the submissions, the Commissioner concurs with the Board that the appellant is guilty of unbecoming conduct and insubordination. The Board's determination in connection with the characterization of appellant's behavior as unbecoming conduct and insubordination is fully supported by the record and consistent with applicable law. The crux of this issue on appeal, however, involves the extent of the penalty assessed by the Board. While in no way minimizing the appellant's

infractions, the Commissioner finds that the Board's penalty determination in this case was unreasonable as the one-year suspension of the appellant's teaching certificate is not supported by the evidence in the record and as such it is an unduly harsh penalty.

The Board is fully authorized to modify a penalty recommended by the ALJ in her Initial Decision pursuant to *N.J.A.C.* 1:1-18.6; however, the appropriate penalty must be assessed based upon the evidence in the record. Although the Board maintains that the appellant's conduct cannot be lightly dismissed, it does not provide a reasonable justification for the imposition of a one-year suspension in light of the extent of the conduct proven at the OAL. Notably, the ALJ determined that the proven conduct generally amounted to either minor or trivial infractions and the Board adopted the factual determinations and legal conclusions of the ALJ. Despite the list of charges, the Board effectively proved that the appellant's behavior was at times inappropriate but the conduct did not rise to the level of establishing that she is unfit to discharge the duties and functions of her position as a teacher. Additionally, the appellant's prior record contained several positive evaluations which the Board specifically recognized as an otherwise untarnished career. As a result, there is simply too significant a disparity between the nature of the conduct proven at the OAL and the severe one-year suspension imposed by the Board.

Although a one year suspension in this case is not warranted, the Commissioner agrees with the Board that the proven conduct necessitates some form of penalty. It is without question "that teachers carry a heavy responsibility by their actions and comments in setting examples for the pupils with whom they have contact." *In the Matter of the Tenure Hearing of Blasko, School District of the Township of Cherry Hill*, 1980 *S.L.D.* 987, 1003. Appellant's conduct does indicate that she has displayed questionable judgment in the past that does not meet the implicit standard of good behavior required by teaching staff members. Further, despite the

fact that the infractions were generally minor, the appellant engaged in more than one incident where she violated administrative directive and school policy. Therefore, the Commissioner finds and concludes that the loss of the appellant's teacher of Elementary School Certificate for two months to be served in July and August of 2013 is a sufficient penalty to impress upon the appellant the significance of her errors in judgment displayed in this matter.

Accordingly the decision of the State Board of Examiners is modified with respect to the penalty.²

COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2012
Date of Mailing: December 24, 2012

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.