

STATE BOARD OF EXAMINERS DKT. NO. 1415-124
AGENCY DKT NO. 4-12/16A

IN THE MATTER OF THE SUSPENSION :

OF THE CERTIFICATES OF : COMMISSIONER OF EDUCATION

DAVID PEKAREK BY THE STATE : DECISION

BOARD OF EXAMINERS. :
_____ :

Order of Suspension Decision by the State Board of Examiners,
November 11, 2016

For the Respondent-Appellant, Edward A. Cridge, Esq.

For the Petitioner-Respondent State Board of Examiners, Jennifer Hoff, Deputy
Attorney General (Christopher S. Porrino, Attorney General of New Jersey)

In this case the appellant, David Pekarek, is appealing the State Board of Examiners' (Board) November 11, 2016 Order suspending his teaching certificates for two years.¹ This matter was referred to the Board after the appellant was charged with Aggravated Assault based on an incident that occurred during an adult soccer game. Following a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that the appellant was guilty of unbecoming conduct for stomping on the head of an opposing player with his cleated shoe. The ALJ recommended that the appellant's certificates be revoked based on the violent and brutal loss of control and self-restraint exhibited by the appellant. Thereafter, the Board adopted the Initial Decision of the ALJ with regard to the finding of unbecoming conduct, but modified the penalty to include a two year suspension of the appellant's teaching certificates.

On appeal the appellant does not deny that he stomped on the head of an opposing player with his cleated shoe; however, he maintains that the Board's decision to suspend him for

¹ The appellant has a Teacher of Health and Physical Education Certificate and his Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing.

two years was arbitrary, capricious and unreasonable because it is an unduly harsh penalty. The appellant argues that the penalty imposed by the Board is disproportionately severe when compared to penalties imposed by the Board in cases where far more serious unbecoming conduct occurred both in and out of school. In furtherance of his argument, the appellant cites to prior cases that he contends are analogous to his case where the Board imposed a lesser penalty on the teaching staff member for conduct that pales in comparison to the circumstances here. The appellant also emphasized that the penalty should reflect the fact that he was playing in a fiercely competitive adult soccer league, and that he was immediately remorseful for his actions. Moreover, the appellant's conduct had nothing whatsoever to do with his teaching duties, and he has an unblemished teaching record. Therefore, the appellant requests that the Commissioner vacate the suspension imposed by the Board.

In reply, the Board maintains that the decision to suspend the appellant for two years was not arbitrary, capricious or unreasonable, and should be affirmed by the Commissioner. The Board stresses that the appellant is raising the same arguments on appeal that he previously made in his post-hearing brief at the OAL, his exceptions to the Initial Decision, and in his motion for reconsideration filed with the Board. The appellant's arguments were fully taken into consideration when the Board issued the decision to suspend the appellant's certificates for two years. The Board also cited cases to demonstrate that the two-year penalty imposed by the Board – for forcefully stomping on the head of a defenseless player – is well within the parameter of penalties the Board has applied in other comparable cases. The appellant's actions were violent and brutal, and fell far short of the self-restraint and controlled behavior New Jersey requires of its teachers. Therefore, the Board maintains that the two-year suspension of the appellant's certificates should be upheld.

The challenge on appeal focuses exclusively on the extent of the penalty assessed by the Board for appellant's unbecoming conduct. In reviewing appeals from decisions of the

State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board 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)*.

Upon a comprehensive review of the record, the Commissioner finds that the Board's decision to suspend the appellant's certificates for two years was not arbitrary, capricious or unreasonable. Notably, the Board did not simply adopt the penalty of revocation recommended by the ALJ. Instead, in accordance with *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967), the Board properly evaluated the nature and extent of the unbecoming conduct proven during the hearing at the OAL, which – coupled with the appellant's unblemished teaching record and immediate remorse – led to the finding that the more appropriate penalty was a two-year suspension of the appellant's certificates. There is nothing in the record to indicate that the Board's penalty determination was arbitrary, capricious or unreasonable. Therefore, the Commissioner finds no basis upon which to disturb the decision of the State Board of Examiners.

Accordingly the decision of the State Board of Examiners is affirmed for the reasons expressed therein.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 10, 2017
Date of Mailing: February 13, 2017

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