

STATE BOARD OF EXAMINERS DOCKET NO. 1415-137
AGENCY DOCKET NO. 2-5/16A

IN THE MATTER OF THE :
CERTIFICATES OF MARY PURCELL : COMMISSIONER OF EDUCATION
BY THE STATE BOARD OF : DECISION
EXAMINERS. :

Order of Suspension by the State Board of Examiners, April 20, 2016

For the Respondent-Appellant, Michael J. Rogers, Esq.

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

Appellant challenges the determination of the New Jersey State Board of Examiners (Board) that her actions warranted the suspension of her School Business Administrator and Principal Certificates of Eligibility, her Teacher of Elementary School Certificate of Eligibility with Advanced Standing, and her Teacher of Elementary School and Supervisor certificates for three years.

On appeal, the appellant maintains that the Board's decision to suspend her certificates was arbitrary, capricious and unreasonable. Specifically, appellant contends that her certificates should not be suspended because she was not convicted of a criminal offense; instead, she pled guilty to the motor vehicle offense of driving while intoxicated. Additionally, she successfully completed the Pretrial Intervention Program (PTI), so the criminal charge against her – of assault by auto – was dismissed, and all relating records are now expunged. Appellant emphasizes that the Commissioner should not be permitted to consider any information that is now expunged because the arrest and related proceedings have been deemed

not to have occurred. Further, appellant contends that the incident was in no way related to her teaching profession, and in fact did not even occur while she was employed in a school district. Appellant has also sought treatment for her alcohol use. Appellant maintains that the incident was isolated in nature and did not involve moral turpitude, and a suspension of her certificates will serve no useful purpose. As such, appellant argues that her certificates should not be suspended, or in the alternative, the suspension should be retroactive to the August 24, 2013, the date of the incident.

In reply, the Board maintains that the decision to suspend appellant's certificates for three years was not arbitrary, capricious or unreasonable, and should be affirmed by the Commissioner. The Board points out that actions outside of the classroom are relevant in determining whether a teacher is fit to teach. Further, unbecoming conduct is not dependent on a criminal conviction, but rather on the standards that govern teachers. Relying on two cases in which individuals were found to have engaged in unbecoming conduct after driving while intoxicated and causing accidents and property damage, the Board contends that its finding was not arbitrary, capricious, or unreasonable, as conduct similar to appellant's has previously been found to constitute unbecoming conduct. The Board emphasizes that appellant's unbecoming conduct warrants a three-year suspension of her certificates because individuals who engaged in similar conduct have been subjected to significant penalties, such as suspensions and even revocation. Finally, the Board maintains that appellant's entry into a PTI program does not preclude a finding of unbecoming conduct; she admitted to driving while intoxicated – with a BAC of more than three times the legal limit – and causing a three-car accident that resulted in several injuries.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute her 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).

Initially, the record reflects that the appellant was afforded the necessary due process throughout the proceedings before the Board prior to the suspension of her certificates. Although the matter was not transmitted to the Office of Administrative Law in accordance with *N.J.A.C.* 6A:9B-4.6(e) as no material facts were in dispute, the appellant was given an opportunity to submit a written brief for the Board's consideration. Appellant did not submit legal argument.

After full consideration of the record and all submissions, the Commissioner concurs with the Board that the appellant engaged in unbecoming conduct. It is undisputed that the appellant drove while intoxicated, caused a three-car accident and injuries to three people, and was accepted into a PTI program after being charged with assault by auto and driving while intoxicated. The Board's determination in connection with the characterization of appellant's behavior as unbecoming conduct is fully supported by the record and consistent with applicable law. *See, e.g., In the Matter of the Tenure Hearing of Dawn Lewis, School District of the City of East Orange, Essex County*, EDU 11406-09, Initial Decision (Feb. 11, 2010), adopted, Commissioner Decision No. 100-10, decided March 26, 2010 (finding that a teacher had engaged in unbecoming conduct after she drove while intoxicated, hit a utility pole, refused to take a breathalyzer test, and was in the possession of a controlled dangerous substance).

Additionally, the Commissioner finds that the record adequately supports the Board's determination that a three-year suspension of appellant's certificates was the appropriate penalty. Given appellant's serious lapse in judgment, but considering that it was an isolated incident and that appellant had successfully completed PTI, the Board determined that only a suspension of her certificates is warranted. Such a penalty is consistent with penalties issued by the Board in similar matters. *See, e.g., Erin Markakis v. New Jersey State Department of Education, Office of Criminal History Review*, Commissioner Decision No. 369-11, dated September 1, 2011 (disqualifying a teacher from school employment after she drove with a BAC of more than twice the legal limit and caused a three-car accident, which resulted to injuries to five people).

The Commissioner does not find appellant's arguments on appeal to be persuasive. Whether or not the incident was connected to appellant's teaching profession is of no moment; disciplinary action may still be taken for conduct that occurs entirely outside of school or involves people entirely unrelated to school operations. *In the Matter of the Tenure Hearing of Randall Dunham, School District of Point Pleasant Borough, Ocean County*, EDU 4937-99, Commissioner Decision No. 124-00, dated April 17, 2000. Additionally, contrary to appellant's contentions, completion of a PTI program does not prevent the Board from suspending appellant's certificates for unbecoming conduct. *See In the Matter of the Tenure Hearing of Thomas Wachendorf, New Jersey State Department of Corrections, Mountainview Youth Correctional Facility*, EDU 6860-04, Initial Decision (May 3, 2005), adopted, Commissioner Decision No. 253-05, dated July 15, 2005 (stating that "completing of a pre-trial intervention (PTI) program – does not automatically eliminate a disciplinary charge of conduct unbecoming"). The Commissioner notes that, although appellant argues against the propriety of

relying on now-expunged information regarding her arrest and related proceedings, appellant has admitted to the actions that form the basis of the unbecoming conduct determination. Although appellant obviously disagrees with the suspension of her certificates, there is nothing in the record to suggest that the Board's decision was arbitrary, capricious or unreasonable, and as a result 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: March 9, 2017

Date of Mailing: March 9, 2017

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36. (N.J.S.A. 18A:6-9.1)