

303-18A (SBE Decision: <https://www.nj.gov/education/legal/examiners/2018/apr/1112-202.pdf>)
(OAL Decision: http://njlaw.rutgers.edu/collections/oal/html/initial/ede08458-12_1.html)

STATE BOARD OF EXAMINERS DKT. NO. 1112-202
AGENCY DKT NO. 3-5/18A

IN THE MATTER OF THE :
REVOCATION OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
OF ANDREA GIUFFRIDA, : DECISION
STATE BOARD OF EXAMINERS. :

Order of Revocation by the State Board of Examiners, April 18, 2018

For the Respondent-Appellant, Sanford R. Oxfeld, Esq.

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

The Commissioner has reviewed the record and the papers filed in connection with the appellant, Andrea Giuffrida’s appeal of the State Board of Examiners’ (Board) Order of April 18, 2018. In the April 18, 2018 decision, the Board found that the appellant’s three teaching certificates – Teacher of Elementary School Certificate of Eligibility With Advanced Standing; Teacher of Students With Disabilities Certificate; and Learning Disabilities Teacher-Consultant Certificate (certificates) – should be revoked.

This matter was referred to the Board after the Point Pleasant Borough School District dismissed the appellant from her non-tenured position as a result of allegations that she had acted inappropriately toward several of her male colleagues.¹ Following a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that the appellant’s behavior toward her male colleagues was inappropriate, unwelcomed and constituted

¹ The appellant did not have tenure in the District, therefore, the Board was able to terminate the appellant’s employment without filing tenure charges.

unbecoming conduct.² The ALJ recommended that the appellant's certificates be suspended for one year, and that she receive counseling on sexual harassment and professionalism in the workplace in order to address the seriousness of her offenses. Thereafter, the Board adopted the Initial Decision of the ALJ, but modified the penalty to include the revocation of the appellant's certificates.

On appeal, the appellant maintains that the Board's decision to revoke her certificates was arbitrary, capricious and unreasonable. The appellant emphasizes that the Initial Decision: was issued over three years after the record was closed, by an ALJ who did not hear the case; involved two attorneys who did not try the case; and concerned events that occurred seven years earlier. The appellant has been steadily employed in a school environment since she left the Point Pleasant School District in 2011, and there have been no issues at her places of employment. At no time has the State Board indicated why any penalty is mandated eight years after the alleged events occurred when there have been no subsequent problems.

The appellant also contends that the penalty imposed by the Board far outweighs any misconduct that she may have engaged in. The appellant stresses that the alleged conduct did not involve students, did not take place in front of students, and was never brought to the attention of any students. The conduct, however it may be viewed, involved interpersonal actions between adults and, significantly, none of the men involved believed they were being sexually harassed. Finally, the appellant cites to prior case law to argue that the penalty of revocation is not appropriate based on the circumstances in this case. Therefore, the appellant requests that the Commissioner reverse the Board's decision and find that no penalty is required.

In reply, the Board maintains that the decision to revoke the appellant's certificates was not arbitrary, capricious or unreasonable, and as such, it should be affirmed by

² The case was tried before ALJ Schuster on April 15, 2013 and February 18, 2014 and the record closed on July 17, 2014. However, ALJ Schuster did not issue a decision before he retired in 2017. In April 2017, the case was transferred to ALJ Lisa James-Beavers.

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; the only modification to 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 appellant's unbecoming conduct. The appellant engaged in conduct that warranted the revocation of her teaching certificates when she repeatedly made unwanted physical contact with faculty members on school grounds and made comments that created a hostile work environment.

Despite the appellant's assertions to the contrary, the Board also argues that the delay in this matter has not prejudiced the appellant. Instead, the appellant has benefited from this delay by not having a decision rendered against her certificates. Had a decision been issued earlier, the appellant would not have had the opportunity to continue teaching in another school district. Moreover, the appellant has made no showing that she has suffered from a deprivation of fundamental procedural fairness. Finally, the appellant's argument that she has been working without incident holds no weight because the penalty imposed by the Board is not punitive. The appellant's egregious and disruptive conduct warrants the revocation of her certificates.

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).

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. The Board's determination in connection with the characterization of appellant's behavior as unbecoming conduct is amply supported by the record and consistent with applicable law.

The Commissioner also finds that the Board's decision to revoke the appellant's certificates is fully supported by the evidence in the record. The appellant's unbecoming conduct was not based on an isolated incident, but rather upon multiple incidents involving three different co-workers. The appellant's inappropriate behavior included: grabbing the rear-end of a co-worker; kissing a co-worker on the lips in front of other staff members; hugging and kissing another co-worker; and making comments such as, "my breasts don't look bad for a woman over forty." Regardless of the fact that students did not witness the unbecoming conduct, the appellant's unprofessional and unwanted conduct made her co-workers uncomfortable and embarrassed. In addition to creating a hostile environment, the appellant's co-workers attempted to avoid the appellant, thereby causing further disruptions to the school environment. There is nothing in the record to suggest that the Board's decision to revoke the appellant's certificates – based on the nature and extent of the unbecoming conduct proven at the OAL – was arbitrary, capricious or unreasonable.³ Therefore, the Commissioner finds no basis upon which to disturb the decision of the Board.

Accordingly the decision of the State Board of Examiners is affirmed for the reasons expressed therein.⁴

COMMISSIONER OF EDUCATION

Date of Decision: October 2, 2018

Date of Mailing: October 3, 2018

³ The time that it took for this matter to proceed at the OAL is unfortunate; however, the Commissioner is in accord with the Board's assessment that the appellant has actually benefited from the delay.

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.