

117-20A

State Board of Examiners Dkt. No. 1112-202
Agency Dkt. No. 3-5/18A

New Jersey Commissioner of Education
Decision

In the Matter of the Revocation of the
Certificates of Andrea Giuffrida,
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, Laurie Fichera, Deputy
Attorney General (Gurbir S. Grewal, Attorney General of New Jersey)

This matter was referred to the State Board of Examiners (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. 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 constituted unbecoming conduct.¹ 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. The Commissioner affirmed the Board's decision on appeal.

¹ The case was tried before ALJ John 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, who subsequently issued an Initial Decision on October 13, 2017.

Appellant subsequently appealed to the Appellate Division of the Superior Court, which reversed the decision because the Initial Decision of the ALJ – on which the Board and the Commissioner relied – improperly made credibility findings based on transcripts alone, when the ALJ had not heard the testimony of the witnesses. The Appellate Division remanded the matter to the Commissioner to determine whether the redacted record, devoid of the evidence based on the ALJ’s credibility findings, sufficiently supports the revocation of appellant’s certificates.

Following the Appellate Division’s decision, appellant submitted information to the Commissioner. She argued that her behavior since these events occurred in 2011 has been beyond reproach and should be considered as a mitigating factor. Appellant notes that the recipients of her actions did not view them as sexual harassment, and none of the conduct involved students. Appellant further contends that, because she has been unable to teach since the revocation in April 2018, a period of over two years, a sufficient penalty has already been imposed against her.

In reply, the Board argues that the redacted record supports the Board’s decision to revoke appellant’s certificates. Specifically, the Board points to testimony in which appellant admitted to kissing and hugging colleagues. The Board contends that appellant’s good behavior since 2011 does not alleviate it of its responsibility to impose a penalty for her actions and urges the Commissioner to reaffirm its decision.

Upon review, the Commissioner is mindful of the standard of review for appeals from decisions of the State Board of Examiners, under which 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)*. At this stage in the proceeding, the only decision available for the Commissioner’s review is one that is no longer valid. As there is no Board decision based solely on the redacted record or based upon a new record that includes appropriate credibility findings

from an ALJ who has heard the testimony, there is no longer a decision in this case for the Commissioner to review.

Accordingly, this matter is remanded to the State Board of Examiners for further proceedings consistent with this decision.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: May 20, 2020
Date of Mailing: May 21, 2020