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State Board of Examiners Dkt No. 1920-165

Agency Dkt. No. 8-11/21A

## **New Jersey Commissioner of Education**

### **Final Decision**

In the Matter of the Certificates of  
Brett Holeman, State Board of Examiners,  
New Jersey Department of Education.

Order of Suspension by the State Board of Examiners, September 17, 2021

Respondent-Appellant, *pro se*

For the Petitioner-Respondent State Board of Examiners, Sadia Ahsanuddin,  
Deputy Attorney General (Matthew J. Platkin, Acting Attorney General of New  
Jersey)

The Commissioner has reviewed the record and the papers filed in connection with appellant Brett Holeman's appeal of the Order of the State Board of Examiners (Board), dated September 17, 2021, suspending his School Psychologist certificate for six months. Appellant was a tenured school psychologist in the Freehold Regional High School District (Freehold). Freehold certified tenure changes against appellant and, following an arbitration, the Arbitrator determined that appellant had made disparaging comments about his superiors and colleagues, accepted counseling fees from parents of a student, and sent emails containing profanity and advising his supervisor not to refer cases to him. The Arbitrator also found that colleagues criticized appellant in writing and via testimony, including testimony indicating that colleagues were afraid of appellant. The Arbitrator further found that irreconcilable differences between

appellant and Freehold made it inadvisable to reinstate appellant to his position. The tenure charges were sustained, and appellant was dismissed from his position in Freehold.

The matter was then referred to the Board to determine whether appellant's conduct warranted action against his certificates. The Board concluded that the doctrine of collateral estoppel required the Board to accept the facts found in the tenure hearing and that those facts demonstrated that appellant's conduct provided just cause to suspend his certificate. The Board noted that appellant had no record of previous discipline or other inappropriate conduct during his employment in Freehold, and that the Arbitrator's penalty was based more on the breakdown of the relationship between appellant and Freehold than on the nature of appellant's conduct. Accordingly, the Board found that revocation was not appropriate and instead ordered appellant's certificate to be suspended for six months.

On appeal, appellant argues that the arbitration hearing was unfair because of manipulation by the district and deficiencies in the Arbitrator's reasoning. Appellant suggests that the Board did not want to penalize him but felt they had to because they were constrained to accept the facts in the Arbitrator's decision. Appellant contends that he has been sufficiently punished by the trauma of the proceedings and because he has been unable to work in education for the past five years while the proceedings were occurring. Finally, appellant notes that he had positive evaluations for twelve years at Freehold.

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

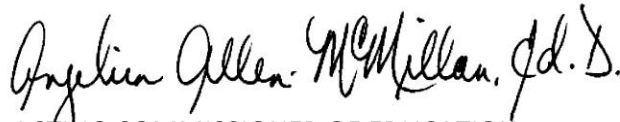
is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*. With regard to reviewing a sanction imposed by the Board, the Appellate Division has defined the standard as determining whether the “punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one’s sense of fairness.” *In re Certificates of Benjamin Norton*, 2016 N.J. Super. Unpub. LEXIS 2291, \*6-7 (internal citations and quotations omitted).

After a comprehensive review of the record, the Commissioner finds that the record adequately supports the Board’s determination that appellant engaged in unbecoming conduct and that a six-month suspension of his certificate is the appropriate penalty. The majority of appellant’s arguments on appeal take issue with the decision of the Arbitrator regarding the tenure charges. However, as the Board correctly concluded, the doctrine of collateral estoppel precludes appellant from relitigating the issue of unbecoming conduct, as appellant had a full and fair opportunity to contest those charges during the tenure proceeding. Appellant was represented by counsel during that proceeding, which included twelve days of hearings. Moreover, appellant has already challenged the Arbitrator’s decision, and it was affirmed by the Appellate Division, which found that there was sufficient credible evidence in the record for the Arbitrator to find that appellant engaged in unbecoming conduct. *Holeman v. Freehold Regional High Sch. Dist. Bd. of Educ.*, 2018 N.J. Super. Unpub. LEXIS 2617 (App. Div. Nov. 29, 2018). The Commissioner finds no basis to dispute the Arbitrator’s findings, particularly when those findings have been affirmed by the Appellate Division.

Regarding his suspension, appellant argues that his loss of tenure – and its accompanying consequences – and previous good record should mitigate his penalty. The Commissioner notes that *N.J.A.C. 6A:9B-4.5(a)* specifically contemplates that, following a

teacher's loss of tenure or employment, the Board may initiate proceedings to suspend or revoke the teacher's certificates. Accordingly, the possible consequences of incompetence or unbecoming conduct may be *both* loss of tenure/employment *and* suspension of certificates, and the former does not mitigate the latter. Furthermore, while the Commissioner acknowledges appellant's prior good record, that alone does not fully mitigate the penalty. The lack of prior discipline does, in these circumstances, serve to reduce the possible penalty from revocation to a six-month suspension.

Accordingly, the decision of the State Board of Examiners suspending appellant's School Psychologist certificate for six months is affirmed.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 23, 2022  
Date of Mailing: June 23, 2022

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS  
BRETT D. HOLEMAN : ORDER OF SUSPENSION  
\_\_\_\_\_ : DOCKET NO: 1920-165

At its meeting of February 28, 2020, the State Board of Examiners (Board) reviewed a tenure decision regarding Brett D. Holeman, a tenured teacher in the Freehold Regional High School District (Freehold). Freehold certified tenure charges against Holeman for allegedly speaking inappropriately to a student, cursing loudly during testing, failing to complete IEPs in a timely manner, spending time on his private counseling practice while working for the Board, among other related allegations.

Pursuant to *N.J.S.A.* 18A:6-16, the Arbitrator assigned by the Department of Education to hear the case, referred to the State Board of Examiners (Board) the tenure matter captioned *In the Matter of the Tenure Hearing Between Brett D. Holeman and the Freehold Regional School District Board of Education*, Dkt. No. 249-9/16 (Arbitrator’s Decision, May 12, 2017). The arbitration decision is incorporated herein by reference.

Generally, in the Tenure Charges and Statement of Evidence, which are incorporated herein by reference, Freehold alleged that Holeman engaged in inappropriate behavior (comments, language, and expressions) including use of profanity and reference to sexual activity in front of students; made repeated derogatory comments about and to colleagues and supervisors; engaged in erratic and concerning behaviors that intruded into the workplace; jeopardized the State mandated testing environment; demonstrated a lack of respect for authority; disregarded the District’s organizational plan; and did not use the proper chain of command.

Freehold also alleged that Holeman spoke inappropriately to a student distraught over a breakup with a girlfriend. Holeman allegedly told the student that the girlfriend was a “slut” and that he would

soon leave for college and could “fuck 40 girls.” Holeman also allegedly recommended a book entitled “F\*ck Feelings,” which is a profanity filled self-help book.

Holeman also acted disruptively during the administration of the PARCC testing. He was allegedly cursing and talking loudly and made colleagues uncomfortable. Holeman failed to complete IEPs in a timely manner and spent time on his private counseling practice during work hours. He also accepted payment when he counseled current and former students and allegedly directly solicited students for his private counseling services.

Holeman allegedly failed to disclose prior employment with West Morris Regional High School District (West Morris) when he applied to Freehold. Documents from West Morris indicate that Holeman demonstrated similar conduct at West Morris when employed there and that he was subsequently terminated from that position.

In his Decision (which is incorporated herein by reference), the Arbitrator found that “it would be inadvisable to reinstate Dr. Holeman. The record indicates irrevocable differences between administration, staff members and Dr. Holeman.” Accordingly, the Tenure Charges were sustained and Holeman was dismissed from his position with Freehold.

The Arbitrator determined that Holeman made disparaging comments about his superiors and colleagues. He also determined that Holeman accepted counseling fee(s) from parents of a student in 2013. He further found that Holeman sent an email containing profanity to a supervisor stating that she “caved.” He also told the supervisor in an email not to refer cases to him. Moreover, the Arbitrator found that Holeman’s own educator association offered testimony that colleagues were afraid of Holeman. This witness testified that Holeman stated to the principal that she should “sleep with one eye open.” The Arbitrator noted how unusual it is that an association representative would provide negative testimony.

He noted further that colleagues criticized Holeman in writing and by testimony. Holeman was dismissed from his tenured employment with Freehold as a result of the charges proven in the tenure proceeding.

Holeman currently holds a School Psychologist Certificate. After reviewing the above information, at its May 14, 2020 meeting, the Board voted to issue an Order to Show Cause to Holeman as to why his certificates should not be revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Holeman the Order to Show Cause by regular and certified mail. The Order provided that Holeman's Answer was due within 30 days. Holeman filed his Answer on August 21, 2020.

In that Answer, Holeman admitted that he was the subject of tenure charges but denies the allegations contained therein. *See* Answer at ¶¶ 2,3,4,5,6,7. Holeman admitted that the Arbitrator found that "it would be inadvisable to reinstate Dr. Holeman" and that he was dismissed from his position. *Id.* at ¶ 8. He states that only a small portion of the lesser of Freehold's allegations against him were sustained. *Id.* Further, Holeman admits to certain allegations, indicates that there were mitigating factors regarding some of those allegations, and denies that he accepted a fee for private counseling or that he told a colleague to "sleep with one eye open." *Id.* at ¶ 9. He also asserted 10 separate defenses.

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on March 9, 2021, the Board sent Holeman a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Holeman was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against his certificates as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Holeman's offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate

sanction, if any. Holeman was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Holeman filed a written response on May 21, 2021. Holeman also asked to appear before the Board.

In his Hearing Response, Holeman argued that Freehold failed to prove a vast majority of its allegations and those allegations that were substantiated do not warrant revocation. *See* Hearing Submission at p. 1-2. Holeman argues that the arbitration findings are not extreme or egregious so as to warrant revocation of his teaching certificates. *Id.* at p. 11. Holeman then details the findings of each charge, along with mitigating circumstances surrounding each charge. *Id.* at p. 12-14.

Holeman additionally argues that in the event Board finds just cause to take action against his certificates, the sanction should align to the circumstance and the “local nature” behind the conduct, along with consideration of the penalties Holeman has already incurred. *Id.* at p. 17. He states that the basis for the Arbitrator’s Award was the “breakdown in the working relationship in the Guidance Department at Freehold.” *Id.* at p. 18. Holeman states that he has nearly lost everything professionally due to this matter. The impact of the “salacious nature of the charges” thwarted his ability to develop his private practice. He has dealt with the repercussions of this matter for five (5) years. *Id.* at p. 18-19. Holeman also submitted a written statement to the Board, which was reviewed.

In testimony before the Board, Holeman’s attorney, James Zazzali, detailed Holeman’s stellar career. He stated that there were 67 allegations against Holeman and that after 12 days of hearing, the arbitrator only found 4 or 5 of the incidents were substantiated. He stated that Holeman was the subject of a relationship breakdown and that was the reason the arbitrator found it appropriate to dismiss his tenure – because it would be “inadvisable” to bring him back in light of the breakdown. Mr. Zazzali then detailed the findings of misconduct in the Decision. He asked that the Board consider the severity of the penalty Holeman endured for the last 5 years.



Holeman made a statement to the Board. He asked for understanding and mercy. He indicated that he is a family man; it is his life's work to try and create a better world for his children. He stated that in 2016 he saw an injustice with a student. His advocacy for the student conflicted with the District. He stated that he should have been smarter and more patient; if he knew then what he knows now he would not have risked anything. He asked the Board to look at his entire 13-year record. He wants the chance to pursue his goals again and be an example of service and dedication. One Board member asked a question of Holeman, which he responded to.

The threshold issue before the Board in this matter, therefore, is whether Holeman's conduct constitutes conduct unbecoming a certificate holder. At its meeting of July 30, 2021, the Board considered the allegations in the Order to Show Cause as well as Holeman's Answer, Hearing Response, and testimony. The Board determined that it was constrained by collateral estoppel to accept the facts as found in the tenure hearing and therefore no material facts related to Holeman's offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17, 2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings). Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Holeman's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.5*. The Board finds that it does.

The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C. 6A:9B-4.4*. In this case the Arbitration Decision establishes that Holeman made inappropriate or disparaging comments to colleagues and superiors; accepted counseling fees from parents of a current student in 2013;

spent time on his private counseling practice while employed at Freehold by using his Freehold email to set up/manage private counseling appointments; bore some responsibility in the delay of IEP submissions; and his conduct resulted in a damaged relationship with the guidance department, teaching staff, and administration. Such conduct is unfitting of a role model.

Nevertheless, there is no record of previous discipline for similar conduct, or other inappropriate conduct in his employment history with Freehold. Further, the Arbitrator's Decision as to penalty was predicated on the breakdown in relationship between Holeman and his colleagues and less so the nature of his conduct. Accordingly, the Board does not believe that revocation is appropriate. Rather, in light of the above, the Board finds that the appropriate penalty is a six-month suspension of his educator certificates.

Accordingly, on July 30, 2021, the Board voted to suspend Brett D. Holeman's School Psychologist certificate for a period of 6 months. On this 17<sup>th</sup> day of September 2021, the Board voted to adopt its formal written decision and it is therefore ORDERED that Holeman's certificates are hereby suspended for 6 months, effective immediately. It is further ORDERED that Holeman return his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

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Rani Singh, Secretary  
State Board of Examiners

RS/KAG/cf

**Date of Mailing:**  
**via certified and regular mail**

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-38.4.