

19-23
State Board of Examiners Dkt No. 1819-240
OAL Dkt. No. EDE 15392-19
Agency Dkt. No. 5-7/22A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Michael D'Alessio, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, June 30, 2022

For the Respondent-Appellant, James J. Uliano, Esq.

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

The Commissioner has reviewed the record and the papers filed in connection with appellant Michael D'Alessio's appeal of the Order of the State Board of Examiners (Board), dated June 30, 2022, revoking his Teacher of Handicapped and Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing. The Board issued an Order to Show Cause on September 19, 2019, and the matter was transmitted to the Office of Administrative Law (OAL). Following a hearing at the OAL, the Administrative Law Judge (ALJ) found that appellant engaged in conduct unbecoming a teacher. Criminal charges had been filed against appellant, stemming from an investigation into the sale of prescription pain medication which revealed that Kevin McNamara (McNamara), an individual associated with appellant, obtained medication from an Acme pharmacy using appellant's credit card, and then sold these medications from

appellant's car in the parking lot of the Acme pharmacy, which is located both within a school zone and within 500 feet of a public housing unit. Additionally, appellant's 14-month-old son was present in the vehicle at the time of the transaction. Such conduct resulted in appellant pleading to an Accusation for Possession of a Controlled Dangerous Substance (CDS), suboxone (3rd degree); he received an Order of Postponement and entered a Pre-Trial Intervention (PTI) program for a period of 12 months. The ALJ recommended that appellant's certificates be revoked. Thereafter, the Board adopted the Initial Decision of the ALJ on May 19, 2022.

On appeal, appellant argues that the Board acted in an arbitrary, capricious, and unreasonable manner because it incorrectly relied upon the ALJ's improper determinations regarding credibility and findings of fact. Specifically, appellant claims that he could not have known of McNamara's substance abuse problems with prescription medications; that when assessing his credibility, the ALJ failed to consider the fact that appellant had his infant son in the car at the time of the incident; and that he could not have known that McNamara's request for a ride to the local pharmacy would result in criminal conduct. Appellant further purports that this singular incident does not rise to the level of unbecoming conduct. Appellant also contends that the ALJ's decision gave inappropriate weight to appellant's participation in the PTI program as an admission of guilt. Finally, appellant argues that the Board failed to consider evidence of mitigation provided by appellant at the OAL, including the fact that he has dedicated his life to helping the special education community, has been back to teaching for two years without incident, and has not had related tenure charges filed against him.

In reviewing appeals from decisions of the Board, 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).

Upon review of the record, the Commissioner concurs with the Board that appellant has engaged in unbecoming conduct. The Commissioner also finds that the Board's decision to revoke appellant's certifications was not arbitrary, capricious, or unreasonable. The Commissioner notes that the Board's decision does not modify any findings of fact or legal conclusions of the Initial Decision. Although appellant contests those findings or conclusions on appeal, the Commissioner accepts the ALJ's findings and conclusions and is satisfied that the record adequately supports the Board's determination that appellant engaged in unbecoming conduct and that revocation of his certificates is the appropriate penalty.

An agency head may not reject or modify any findings of fact as to issues of credibility of lay witnesses unless it is first determined from a review of the record that those findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. *N.J.S.A. 52:14B-10(c)*; *N.J.A.C. 1:1-18.6(c)*. Despite appellant's argument to the contrary, the ALJ was clearly aware of the fact that appellant's son was in the car at the time of the incident. The ALJ's findings that appellant's testimony was "less than truthful" and his "denial of McNamara's drug addiction less than credible" were made only after he carefully

heard the testimony of all witnesses to the proceeding, which included observing the demeanor of appellant. Accordingly, the Commissioner concludes that the ALJ's credibility findings, on which the Board relied, were supported by sufficient, competent, and credible evidence in the record and were not arbitrary, capricious, or unreasonable.


Regarding appellant's claim that the ALJ placed undue weight on appellant's PTI as an admission of guilt, the ALJ specifically stated, "This tribunal bases no finding upon the criminal charges or acceptance in the PTI program." In addition to this direct negation of appellant's claim, it is also clear from the decision as a whole that the ALJ reached his conclusions based on information about appellant's underlying conduct, not his acceptance in the PTI program.

Furthermore, although appellant argues that this subject incident was a singular event that does not rise to the level of flagrancy required of unbecoming conduct, analysis of a charge of unbecoming conduct focuses on "the morale, efficiency, and public perception of an entity, and how those concerns are harmed by allowing teachers to behave inappropriately while holding public employment." *Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4, 14 (2017). Unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (S. Ct. 1943), *aff'd*, 131 N.J.L. 326 (E. & A. 1944). Teachers "are professional employees to whom the people have entrusted the care and custody of [children.] This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *In the Matter of the Tenure Hearing of Jacque L. Sammons, Sch. Dist. of Black Horse Pike Regional, Camden Co.*, 1972 S.L.D. 302, 321. In the instant matter, appellant not only facilitated possession and distribution of a CDS, which

alone is a serious offense, but he did so with the knowledge that his 14-month-old son was in his vehicle.

Finally, appellant's argument that the Board failed to consider the fact that he returned to teaching for two years without incident and did his job well is not persuasive since it is the Board, and not his employer, who is empowered to determine whether he may retain his certification to teach. *N.J.S.A. 18A:6-38.; N.J.A.C. 6A:9B-4.4.*

Accordingly, the decision of the Board is affirmed. Appellant's Teacher of the Handicapped and Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing are hereby revoked.¹


ANGELICA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2023
Date of Mailing: January 25, 2023

¹ 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 CERTIFICATES OF : STATE BOARD OF EXAMINERS
MICHAEL S. D’ALESSIO : ORDER OF REVOCATION
_____ : DOCKET NO: 1819-240

At its meeting of August 1, 2019, the State Board of Examiners (Board) reviewed information it received regarding Michael S. D’Alessio. The Monmouth County Prosecutor’s Office and the Office of Student Protection (OSP) provided information to the State Board of Examiners (Board) regarding D’Alessio.

On June 10, 2019, D’Alessio received an Order of Postponement and entered a Pre-Trial Intervention (PTI) program for a period of 12 months following entry of an Accusation for Possession of a Controlled Dangerous Substance (CDS), suboxone (3rd degree). The Accusation was the result of several other charges in which D’Alessio was alleged to have engaged in conspiracy to distribute CDS within 500 feet of a public housing unit, knowingly distribute, dispense or possess CDS with intent to distribute within 1,000 feet of school property, harm to a child, and possession of oxycodone, amphetamine and alprazolam.

These charges were the result of an investigation into the sale of prescription pain medication. The investigation revealed that individual(s) associated with D’Alessio obtained medication from the Acme pharmacy and then returned to the parking lot outside the pharmacy. The medication was sold in the parking lot out of the vehicle driven by D’Alessio. D’Alessio had his child in the car at the time of the investigation and allegedly when the sale(s) were made; further D’Alessio’s credit card was used to purchase the prescription medication.

D’Alessio currently holds a Teacher of Handicapped and Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing. After reviewing the above information, at

its September 19, 2019 meeting, the Board voted to issue an Order to Show Cause (OSC) to D'Alessio as to why his certificates should not be revoked.

The Board sent D'Alessio the OSC by regular and certified mail on September 23, 2019. The OSC provided that D'Alessio must file an Answer within 30 days. D'Alessio responded on October 21, 2019. In his Answer, D'Alessio admitted that he received pretrial intervention (PTI) but generally denied the allegations that formed the basis for the criminal charges. (Answer, ¶¶ 3-4). D'Alessio indicated that he was “in the wrong place at the wrong time.” *Id.* at ¶ 4. He further states that he would not have agreed to enter PTI if he realized it would jeopardize his educator certificates. *Id.* at ¶ 3. He believes that his certificates should not be revoked because he has dedicated his life to helping the special education community. *Id.* at ¶ 6. He has been back to teaching for two years without an incident. *Id.*

Since there were material facts in dispute, on October 31, 2019, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. On February 15, 2022, Administrative Law Judge (ALJ) Joseph A. Ascione, issued an Initial Decision in the case. *In the Matter of the Certificates of Michael D'Alessio, Jr.*, Dkt. No. EDE 15392-19 (Initial Decision, February 15, 2022).

After reviewing the record, ALJ Ascione found that D'Alessio's actions on October 21, 2015 “clearly demonstrate conduct that is unbecoming, or just cause for a revocation of the certificates.” (Initial Decision, slip op. at 10.) Specifically, ALJ Ascione found that D'Alessio's arrest for possession of CDS is a serious offense and that while D'Alessio denies involvement in the possession and distribution of CDS, he facilitated the actions of his co-defendant (McNamara) in the matter. *Id.* at p. 11. Further, ALJ Ascione found that D'Alessio's actions display “a clear lack of judgment.” *Id.* In conclusion, ALJ Ascione found that the Board met its burden of proof

and that D'Alessio's conduct constitutes unbecoming conduct and just cause to warrant the revocation of his certificates. *Id.* at p. 12.

D'Alessio filed Exceptions and the Deputy Attorney General (DAG or Deputy) representing the Board filed a reply to the Exceptions.

In his Exceptions, D'Alessio argued that the ALJ's finding that D'Alessio may have unknowingly engaged in the conduct was in conflict with his ultimate findings that D'Alessio knowingly engaged in unbecoming conduct that warrants revocation of his certificates. (Exceptions at p. 2). The crux of the matter is the nature of D'Alessio's involvement in the CDS transaction. D'Alessio argues that the ALJ's determination as to that fact is inconclusive and therefore it confirms that the Board did not meet its burden of proof. *Id.*

D'Alessio further argues that ALJ Ascione's determination that D'Alessio should have known of Mr. McNamara's intent to distribute is belied by the fact that D'Alessio testified that from his perspective he was helping an employee of his family business by taking him to a legitimate pharmacist in a familiar town. *Id.*

Additionally, several witnesses testified that D'Alessio's relationship with McNamara was more of a an employee relationship than a friendship. *Id.* D'Alessio states that the testimony does not indicate that he was in the habit of socializing with McNamara. *Id.* at p. 3. Thus, ALJ's finding that D'Alessio should have known of McNamara's addiction is incorrect.

Moreover, D'Alessio challenges the ALJ's determination as to McNamara's credibility when he testified. Additionally, D'Alessio takes exception to the ALJ's finding that his past and present successful employment with Middletown Board of Education did not mitigate the penalty. *Id.* at p. 5. D'Alessio further takes exception to ALJ Ascione's characterization of D'Alessio's

agitated state during his testimony and then using that to determine that D'Alessio's testimony was less than truthful. *Id.*

The DAG assigned to the matter argued that the initial decision should be affirmed because it was not arbitrary or capricious and is supported by credible evidence in the record. *See Reply to Exceptions* at p. 8. She further states that the ALJ correctly assessed witness credibility. ALJ Ascione correctly noted several contradictions in D'Alessio's testimony and noted his agitated state during his testimony. *Id.* at p. 9.

The DAG further stated that the ALJ's decision cites credible testimony to support the finding that D'Alessio had a lifelong familiarity with McNamara, that D'Alessio's card was used to purchase the CDS, that Suboxone was found in D'Alessio's wallet, and that he did not inquire as to why he was being arrested. *Id.* at p. 11. Accordingly, the record supports the ALJ's finding that D'Alessio knew or should have known of McNamara's addiction and should have known that he was involved in the possession and distribution of CDS. *Id.*

Finally, the DAG argued that D'Alessio incorrectly stated that the ALJ disregarded his past and present employment. Rather, the ALJ credited testimony and noted that D'Alessio was able to perform his teaching duties well. *Id.* at p. 15. The record reflects that the ALJ considered this information but "simply found it unconvincing in light of Respondent's reprehensible conduct." *Id.*

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of May 19, 2022, the Board reviewed the Initial Decision, Exceptions and Reply to Exceptions. After full and fair consideration of the Decision and submissions, the Board voted to adopt the Initial Decision.

“Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings.

As noted above, after assessing the evidence and credibility of the witnesses, ALJ Ascione concluded that D'Alessio's testimony as to the nature/significance of his relationship with McNamara was “less than truthful.” *See* Initial Decision at p. 8. ALJ Ascione determined that D'Alessio's denial of McNamara's drug addiction was "less than credible" given McNamara's closeness to D'Alessio's family and business making "the absence of that knowledge implausible." *Id.* He also found that testimony from D'Alessio's coworker was a blanket opinion and based upon this, the Board finds no cause to overturn ALJ Ascione's credibility assessment and therefore his findings of fact.

Moreover, the Board is also unpersuaded by D'Alessio's argument that his current and former employment history should mitigate the penalty here. The ALJ assessed the credibility of the related testimony here and deemed that it does not outweigh the egregiousness of D'Alessio's conduct. *Id.* at p. 11. The Board finds no cause to overturn this finding.

After reviewing the entire record, the Board agrees with the ALJ's assessment regarding D'Alessio's unbecoming conduct and agrees that a revocation of his certificates is appropriate.

Accordingly, on May 19, 2022, the Board voted to adopt the Initial Decision and ordered revocation of D'Alessio's certificates. On this 30th day of June 2022, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that Michael D'Alessio's Teacher of Handicapped and Teacher of Elementary Grades K-8 Certificate

of Eligibility with Advanced Standing is hereby REVOKED, effective immediately. It is further ordered that D'Alessio 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.

Rani Singh, Secretary
State Board of Examiners

Date of Mailing:
via certified and regular mail

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