

277-23
State Board of Examiners Dkt. No. 2021-184
OAL Dkt. No. EDE 08835-2021
Agency Dkt. No. 5-5/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Howard Zlotkin, State Board of Examiners,
New Jersey Department of Education.

Order of Suspension by the State Board of Examiners, May 18, 2023

Respondent-Appellant, *pro se*

For the Petitioner-Respondent State Board of Examiners, Colin G. Klika, 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 Howard Zlotkin's appeal of the Order of the State Board of Examiners (Board), dated May 18, 2023, suspending his Teacher of Elementary Grades K-8 Certificate of Eligibility, Teacher of Biological Science Certificate of Eligibility, Teacher of Biological Science Standard Certificate, and Teacher of Earth Science Standard Certificate for a period of two years.

Appellant, an experienced science teacher who worked in Jersey City, resigned after a flagrant incident of unbecoming conduct in which he angrily cursed at his students and made an offensive gesture while engaging in a profanity-laced diatribe captured on video during a class conducted via Zoom. On September 22, 2021, the Board issued an Order to Show Cause (OSC) for the revocation of appellant's certificates and subsequently transmitted the matter to the

Office of Administrative Law (OAL) for a contested hearing. The Board moved for summary decision.

Having determined that no genuine issues of material fact existed, the Administrative Law Judge (ALJ) granted the Board's motion for summary decision. The ALJ concluded that appellant's actions constituted conduct unbecoming a teacher. Regarding the appropriate penalty, the ALJ cited several mitigating factors, including appellant's appreciation of the seriousness of his actions and the fact that he had taught for more than twenty years without incident. Consequently, the ALJ found that a two-year suspension of appellant's certificates—and not a revocation—was warranted. Upon considering the Board's exceptions regarding the penalty and appellant's reply thereto, the Board adopted the ALJ's Initial Decision and suspended appellant's certificates for two years effective May 18, 2023.

On appeal, while appellant did not object to the determination that a two-year suspension of his certificates was warranted for his proven unbecoming conduct, he contended that the suspension should take effect retroactively, beginning on April 28, 2021 (the date the school district suspended him for his actions), because he should be credited for "time served." In response, the Board argued that the law only provides for prospective suspensions of certificates and that retroactive suspensions would make the entire regulatory process a meaningless exercise. In his reply brief, while appellant expressed his strong disappointment with the Board's objection to imposition of a retroactive suspension, he ultimately decided to "accept [the] two-year suspension without the inclusion of time served." Appellant's reply brief, at 2. Although it appears that appellant has abandoned his sole contention on appeal, he did not formally withdraw his appeal pursuant to *N.J.A.C. 6A:4-4.2(a)*.

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. *N.J.A.C. 6A:4-4.1(a)*. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *Ibid.* Here, the sufficient, credible evidence, in the record—including video footage of the incident at issue—overwhelmingly supports the Board's determination that appellant engaged in unbecoming conduct and that a two-year suspension of his certificates is the appropriate penalty. There is nothing in the record to suggest that appellant did not receive due process or that the Board's decision was arbitrary, capricious, or unreasonable. Moreover, despite his ongoing frustration and disappointment, appellant has indicated that he now accepts the prospective two-year suspension of his certificates.

Accordingly, the decision of the State Board of Examiners suspending appellant's certificates for two years, effective May 18, 2023, is affirmed.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 14, 2023

Date of Mailing: September 18, 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.