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State Board of Examiners Dkt. No. 1920-119

OAL Dkt. No. EDE 01394-20

Agency Dkt. No. 4-5/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of James McMullan, State Board of Examiners, New Jersey Department of Education.

Order of Suspension by the State Board of Examiners, April 17, 2023

For the Respondent-Appellant, Lauren McGovern, Esq.

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

The Commissioner has reviewed the record, hearing transcripts, and papers filed in connection with James McMullan's appeal of the Order of the State Board of Examiners (Board), dated April 17, 2023, suspending his Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing, Teacher of Elementary Grades K-8 Certificate, Supervisor Certificate, and Principal Certificate of Eligibility for a period of two years.

Appellant resigned from his employment as a tenured teacher with the Oakland School District effective June 30, 2019, following allegations of unbecoming conduct. On December 17, 2019, the Board issued an Order to Show Cause (OSC) for the suspension of appellant's certificates and ultimately transmitted the matter to the Office of Administrative Law

(OAL) for a contested hearing. The Board called eight witnesses to testify. Appellant called four witnesses, and also testified on his own behalf. The record closed on November 16, 2022.

The Administrative Law Judge (ALJ) concluded that appellant's actions and multiple instances of poor judgment when dealing with three different students constituted conduct unbecoming a teacher so egregious that it shocked the conscience. *In the Matter of the Certificates of James McMullan*, OAL Dkt. No. EDE 01394-20, Agency Dkt. No. 1920-119, Initial Decision (December 20, 2022) at 12-16. In particular, the ALJ found that appellant: (1) yelled at, mocked, and embarrassed a student who had a learning disability in front of the entire classroom; (2) removed another student from his classroom and left him unsupervised in a hallway, out of appellant's line of sight, with the classroom door locked; (3) falsified facts regarding the hallway incident when asked about it by the principal; and (4) told a third student with special needs that he would have to go to a "special school", then ripped books out of the student's hands in front of other students in the hallway. *Id.* at 14.

When assessing the witness testimony, the ALJ determined that the Board's witnesses were credible and persuasive. *Id.* at 13. Of note, the Board presented direct testimony from the students involved in the first and second incidents. By contrast, the ALJ determined that appellant's own testimony was neither "credible in terms of his factual recitation nor in the manner in which it was given." *Ibid.* In particular, the ALJ found that appellant's "recitation and demonstration of the contact with the students was exaggerated and not credible nor true." *Ibid.* The ALJ described appellant's testimony as "evasive" and found that he "attempted to spin the facts in his favor." *Ibid.* Additionally, the ALJ noted that appellant's testimony regarding his interaction with the student he yelled at and mocked was directly contradicted by that of his own

witness. *Ibid.* Furthermore, the ALJ rejected the defense proffered for appellant's conduct, *i.e.*, "his diabetes and merely a difference in teaching style," as "preposterous." *Id.* at 15-16. The ALJ ultimately recommended that appellant's certificates be "suspended indefinitely." *Id.* at 16.

Upon considering appellant's exceptions and the Board's reply thereto, the Board adopted the ALJ's Initial Decision with a modification as to the penalty. The Board concluded that a suspension with a finite term of two years was appropriate under the circumstances. The Board emphasized the fact that although appellant received prior warnings, reprimands, and guidance from his employer, he nonetheless committed multiple instances of unbecoming conduct, to the detriment of his students. The Board also considered prior decisions in which it imposed two-year suspensions of certificates for analogous instances of unbecoming conduct.

Appellant maintains that no action should be taken against his certificates. He asserts that the Board erred by not considering mitigating factors when determining the penalty to be imposed. Specifically, appellant claims that the Board failed to consider: (1) his lengthy teaching career and his positive impact on students; (2) the impact of his medical condition during the 2018-2019 school year; (3) the hardship a suspension will create for him and students at the Paterson School District, where he has taught for the last four years and has received positive evaluations; and (4) that he is sincerely remorseful and is unlikely to commit unbecoming conduct in the future. Appellant also argues that his 2011 increment withholding, which was restored after he completed a corrective action plan, should not be considered a prior instance of discipline.

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. The Commissioner's role in reviewing appeals is constrained by *N.J.A.C. 6A:4-4.1(a)*, which specifies that "the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to law."

Initially, the record reflects that appellant received due process throughout the proceedings, and he does not contend otherwise. Next, the Commissioner finds that the sufficient credible evidence in the record—including voluminous documentary evidence and credible witness testimony—supports the Board's determination that a two-year suspension of appellant's certificates is warranted given the nature and extent of his proven unbecoming conduct. Appellant committed multiple instances of unbecoming conduct which directly involved three different students. Neither the ALJ nor the Board based its decision on the withholding of appellant's increment in 2011. The Board appropriately deferred to the ALJ's credibility findings, as the ALJ had the opportunity to carefully observe and evaluate the demeanor of the witnesses who testified.

Regarding appellant's claims about mitigating circumstances, neither the length of his teaching career nor his positive influence on some students mitigates the need for disciplinary action in this matter. Contrary to his assertions, the record does not support a finding that he has expressed sincere remorse or that he is unlikely to commit similar unbecoming conduct in

the future. Apart from the fact that his testimony before the ALJ lacked credibility, appellant steadfastly continues to cite his ongoing medical condition as an excuse for his unbecoming conduct despite the ALJ's sound rejection of that defense. His claim that the Paterson School District and its students will suffer a hardship if his certificates are suspended is grounded in speculation. Upon considering the totality of the circumstances, the Board reasonably modified the recommended penalty from an indefinite suspension to a two-year suspension of appellant's certificates.

As for the cases cited by appellant in his briefs, they are readily distinguishable from the present matter. None of them support the conclusion that any aspect of the Board's decision was arbitrary, capricious, or contrary to law. The fact that other individuals received shorter suspensions of their certificates under entirely different circumstances is neither persuasive nor dispositive. Because the Board's decision is supported by sufficient, credible evidence, and appellant has failed to establish that it was arbitrary, capricious, or contrary to law, the Commissioner has no grounds to disturb it. *N.J.A.C. 6A:4-4.1(a)*.

Accordingly, the decision of the State Board of Examiners suspending appellant's certificates for two years, effective April 17, 2023, is affirmed.¹


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

Date of Decision: September 29, 2023
Date of Mailing: October 2, 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.