

359-23

State Board of Examiners Dkt No. 1718-102

OAL Dkt. No. EDE 02477-18

Agency Dkt. No. 1-4/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Richard Chambers, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, March 3, 2023

For the Appellant, Edward Cridge, Esq.

For the Respondent State Board of Examiners, Michal Czarnecki, 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 Richard Chambers' appeal of the Order of the State Board of Examiners (Board), dated March 3, 2023, revoking his Teacher of Music certificate. Following the issuance of an Order to Show Cause and a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that appellant engaged in conduct unbecoming a teacher and recommended that appellant's certificate be revoked. The ALJ found that petitioner, a middle school music teacher, grabbed student M.L. by the collar on two occasions, and that he threw M.L. on the ground on one of those occasions. The ALJ further found that, in another incident, appellant grabbed student J.S. and threw him against a wall. Thereafter, the Board adopted the Initial Decision of the ALJ and revoked appellant's certificate.

On appeal, appellant argues that the determination regarding J.S. was based on hearsay with no residuum of competent evidence. Appellant also contends that the ALJ erroneously concluded that M.L.'s testimony was credible, and appellant's testimony was not credible. According to appellant, even if all the findings of the ALJ are accepted, revocation is an excessive penalty and not in line with penalties imposed by the Board in other cases. Appellant also points to his lengthy career without any allegations until those at issue in this matter.

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 finds that appellant received due process and concurs with the Board that appellant has engaged in unbecoming conduct. The Commissioner also finds that the Board's decision to revoke appellant's certificate was not arbitrary, capricious, or unreasonable.

Pursuant to *N.J.S.A. 52:14B-10(c)*, an ALJ's credibility findings may not be rejected or modified unless those findings are "arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." Having thoroughly reviewed the

record, the Commissioner finds no reason to disturb the ALJ's finding that M.L.'s testimony was credible, while appellant's testimony was not. Having observed the witnesses' demeanor, tone, and physical actions, the ALJ was in the best position to make credibility determinations. With regard to M.L., the ALJ specifically acknowledged that certain areas of his testimony appeared to be partially embellished, but the ALJ nonetheless found that M.L.'s testimony that appellant had inappropriately touched him was credible and persuasive. The ALJ's findings were further supported by the fact that both M.L.'s own statement to the Department of Children and Families Institutional Abuse Investigation Unit (IAIU) investigator, taken shortly after the classroom incident, as well the statements made to the investigator by other students who witnessed the incident, corroborated the version of events he set forth in his testimony. The minor inconsistencies in M.L.'s testimony that appellant identifies do not change this conclusion.

The Commissioner finds that it was not inappropriate for the Board to consider evidence of the incident between appellant and J.S. In *IMO of the Tenure Hearing of M. William Cowan, Sch. Dist. of the Borough of Bernardsville*, 224 N.J. Super. 737, 740 (App. Div. 1988), a tenured teacher (Cowan) was dismissed for unbecoming conduct based, in part, on an incident of alleged assault, which Cowan denied had occurred. Evidence of the assault consisted of: 1) the testimony of the school's principal, who did not witness the incident; 2) the principal's memorandum to Cowan, recounting the facts the principal had learned from eyewitnesses; and 3) Cowan's memorandum in response, denying the allegations. *Id.* at 748. The teacher contended that all of this evidence was inadmissible hearsay, and the Appellate Division agreed. *Id.* at 749. However, the Appellate Division "nonetheless conclude[d] that application

of the residuum rule does not require that hearsay evidence of the assault be ignored." *Id.* at

750. The Appellate Division stated:

Applying the residuum rule requires identifying the "ultimate finding of fact" that must be supported by a residuum of competent evidence. Here the "ultimate finding of fact" was that during the years 1974, 1975, 1980, 1982 and 1984 appellant engaged in one or more of eleven acts of alleged misconduct that were "unbecoming." Alternatively, one might characterize as the "ultimate finding of fact" that appellant was engaged in a course of unbecoming conduct of which the acts charged were examples. Whether each of the acts charged is viewed as unbecoming conduct, as corroborative evidence that one or more of the other acts charged were unbecoming conduct, or only as examples of a course of unbecoming conduct, there need not be a residuum of competent evidence to prove each act considered by the Commissioner so long as "the combined probative force of the relevant hearsay and the relevant competent evidence" sustains the Commissioner's ultimate finding of unbecoming conduct.

Ibid. (citing to *Weston v. State*, 60 N.J. 36, 52 (1972)).

Here, the evidence of the incident between appellant and J.S. is similar to the evidence presented in *Cowan*, including: 1) the testimony of IAIU investigator Tamika Solomon, who did not witness the event; 2) Solomon's report, recounting the facts as described to her by the students who witnessed the incident with J.S.; and 3) appellant's testimony denying the allegations regarding J.S. There is additional evidence in the form of written statements from the student witnesses, given on the same day as the incident. As in *Cowan*, all of the pieces of evidence against appellant are hearsay. Nonetheless, as in *Cowan*, the application of the residuum rule did not require the Board to disregard evidence of the incident with J.S., because there does not need to be a residuum of competent evidence to prove each act considered by the Board. The Commissioner concludes that the combined probative force of all of the evidence – the competent evidence regarding the two incidents with M.L. and the hearsay

evidence regarding the incident with J.S. – sustains the Board’s ultimate finding of unbecoming conduct.

The Commissioner concludes that the Board’s decision to impose the penalty of revocation is not arbitrary, capricious, or unreasonable. In *IMO the Certificate of Julius Young*, State Board of Examiners, decided July 25, 2006, the Board revoked the certificate of a teacher who choked a student into unconsciousness. In doing so, the Board noted that the teacher demonstrated a lack of self-restraint and stated that such “volatility does not belong in a classroom.” *Ibid.* In *IMO the Certificates of Laurie Rosen*, State Board of Examiners, decided October 20, 2005, the Board revoked the certificates of a teacher who kicked a student, hit him in the head with an open hand, and hit his head against a wooden divider.¹ In doing so, the Board quoted the ALJ, who found that it was irrelevant whether the student was the aggressor and stated, “Rosen should have known better and her failure to take alternative, acceptable corrective action short of striking the child clearly constituted unbecoming conduct.” *Ibid.* Here, while appellant’s actions toward J.S. and M.S. may be less severe than the actions of Young or Rosen, his loss of control resulted in aggressive behavior on multiple occasions.² It does not “shock the sense of fairness” for the Board to revoke the certificate of a teacher who demonstrates this type of volatility and lack of judgment.

While appellant argues that revocation is too severe a penalty based on decisions in tenure matters imposing lesser penalties, the Commissioner does not find this argument


¹ The Commissioner notes that criminal charges were also filed against Laurie Rosen. Despite appellant’s argument to the contrary, the Commissioner does not find this distinction persuasive. Rosen entered a pre-trial intervention program and, accordingly, was not convicted of any criminal charges.

² Furthermore, his behavior was more egregious than the behavior of the teachers in the cases cited by appellant in support of his argument for a lesser penalty.

persuasive. Initially, the majority of cases cited by appellant do not involve a teacher engaging in physical contact with a student, and those cases are therefore inapposite to the Board's determination here. Those cases that do involve physical contact are factually distinguishable and, even if they had involved the same conduct committed by appellant, they would not be relevant because the Board is not bound by penalties assessed in tenure proceedings. Tenure proceedings and Board proceedings are separate proceedings undertaken for different purposes. Tenure proceedings are limited to a determination as to whether any proven tenure charges warrant the teacher's dismissal from employment or reduction in salary. *N.J.S.A. 18A:6-38*. Board proceedings include a determination of whether the teacher's conduct warrants revocation or suspension of his certificate. *N.J.A.C. 6A:9B-4.4(a)*. The Commissioner has previously held that even in proceedings against the same individual involving the same conduct, the Board is not precluded from imposing a higher penalty than an arbitrator imposed in tenure proceedings. *In the Matter of the Certificates of Nicholas Cilento, State Board of Examiners, New Jersey Department of Education, Commissioner Decision No. 131-22, decided June 23, 2022; In the Matter of the Certificates of Scott Levy, State Board of Examiners, New Jersey Department of Education, Commissioner Decision No. 268-23, decided September 7, 2023.*

Furthermore, while appellant argues that he has never been subject to any other discipline or Board action, that alone does not suffice to mitigate appellant's pattern of physical aggression.

Accordingly, the decision of the Board is affirmed. Appellant's Teacher of Music certificate is hereby revoked.³


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

Date of Decision: December 5, 2023
Date of Mailing: December 6, 2023

³ 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.