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State Board of Examiners Dkt. No. 1819-180

Agency Dkt. No. 6-6/23A

## **New Jersey Commissioner of Education**

### **Final Decision**

In the Matter of the Certificates of  
Daniel L. DeJesus, State Board of Examiners,  
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, May 14, 2020

For the Respondent-Appellant, Antonio J. Toto, Esq.

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

The Commissioner has reviewed the record and papers filed in connection with Daniel DeJesus's appeal of the Order of the State Board of Examiners (Board), dated May 14, 2020, revoking his Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education, and Supervisor certificates.

On June 28, 2019, the Board issued an Order to Show Cause regarding the revocation of appellant's certificates upon learning that, in July 2018, he was indicted on charges of third-degree burglary, theft by unlawful taking, and fencing. The charges arose from an incident during which he entered the victim's residence without permission, stole a gold necklace valued at \$3,000, and sold it to a third party. In January 2019, appellant entered the pretrial intervention (PTI) program for a period of twenty-four months. As a condition of entry to PTI program, he pled guilty to third-degree burglary and the court entered an Order of Postponement.

Thereafter, the Department of Education's Criminal History Review Unit (CHRU), now known as the Office of Student Protection (OSP), notified the Board that, due to appellant's third-degree burglary "conviction," he was disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1*.<sup>1</sup>

The Board twice mailed the Order to Show Cause to appellant, via certified and regular mail, on July 2, 2019, and again on September 17, 2019, directing him to file an answer admitting or denying the facts set forth in it within 30 days. Having received no response, the Board, via letter dated November 18, 2019, advised him that the allegations set forth in the Order to Show Cause were deemed admitted. The Board invited him to file a written submission within 30 days, to appear in person to give testimony, and advised that if no written response was received, it would consider the matter on the record currently before it. He failed to respond to the letter. Via letter dated February 10, 2020, the Board advised appellant that the matter was scheduled for consideration on February 28, 2020, and provided him with the meeting time and location. At its meeting on that date, the Board voted to revoke appellant's certificates.

On May 14, 2020, the Board voted to adopt its formal written decision and ordered the revocation of appellant's certificates. In its decision, the Board concluded that no material facts were in dispute since appellant never denied that he engaged in the conduct alleged in the Order to Show Cause, nor did he deny that he pled guilty to third-degree burglary. Accordingly, the Board summarily found, based upon the record before it, that respondent had engaged in unbecoming conduct. Next, the Board considered whether his "conviction" and employment

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<sup>1</sup> As will be discussed in more detail herein, the record on appeal does not contain a judgment of conviction. The Department's decision to permanently disqualify appellant from public school employment pursuant to *N.J.S.A. 18A:6-7.1*, issued January 28, 2019, is not presently before the Commissioner for review.

disqualification constituted just cause to act against his certificates. The Board found that his “conviction” demonstrated behavior that fell far short of a role model for students. Furthermore, the Board reasoned that since he was statutorily barred from employment in public schools, he should not be permitted to retain his certificates or hold himself out as a teacher. In the end, the Board concluded that the only appropriate sanction was revocation of his certificates.

On June 9, 2023, more than three years after the Board issued its written decision and Order of Revocation, appellant’s counsel filed an appeal with the Commissioner claiming that appellant never received any decision or order from the Board revoking his certificates. In his letter brief, which did not comport with the filing requirements set forth at *N.J.A.C. 6A:4-2.8*, he contends that his certificates should be reinstated because: (1) he successfully completed his PTI program without incident; (2) the “condition of P.T.I. did not state that he was banned from teaching or that he had to revoke [sic] his teaching license”; and (3) the underlying conduct did not involve children, occur on school property, or during school hours.

In its opposition brief, the Board contends that appellant’s appeal is untimely and should be dismissed on that basis. Additionally, the Board contends that its determination to revoke appellant’s certificates should be affirmed by the Commissioner because it was reasonable and sufficiently supported by the record. In particular, the Board emphasizes that appellant’s successful completion of the PTI program does not preclude it from revoking his certificates, nor does the fact that the underlying unbecoming conduct did not involve children, school property, or occur during school hours.

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 Commissioner finds that the appeal was untimely and can be dismissed on that basis. Pursuant to *N.J.A.C. 6A:4-2.2(a)*, "Appeals of final State Board of Examiners decisions shall be filed within 30 days of the filing date of the decision being appealed." The instant appeal was filed more than 3 years after the Board issued its decision and Order of Revocation. Appellant has not offered any explanation, by way of certification, as to why he waited until June 2023 to appeal a decision that was issued in May 2020. Although the Commissioner may, in her discretion, relax certain rules if adherence to same would result in an injustice, appellant has not provided any basis for concluding that the filing deadline should be relaxed in this case.

Even assuming the appeal was timely filed, the Commissioner finds that the Board's decision to revoke appellant's certificates is supported by sufficient credible evidence in the record and is consistent with precedent given the nature and extent of the underlying conduct, which is undisputed and clearly constitutes conduct unbecoming an educator. "[T]eachers . . . 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." *In the Matter of the Tenure Hearing of Sammons*, 1972 *S.L.D.* 302, 321. Teachers "hold positions demanding public trust, and in such positions,

they teach, inform, and mold habits and attitudes, and influence the opinion of their pupils.” *In the Matter of the Tenure Hearing of Tordo*, 1974 S.L.D. 97, 98-99.

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. “Conduct unbecoming” is an “elastic” concept that includes “conduct which adversely affects the morale or efficiency” of the public entity or “which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services.” *In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960). *Accord Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4, 13 (2017). A finding of unbecoming conduct “may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” *Bound Brook Bd. of Educ.*, 228 N.J. at 14 (quoting *Karins v. City of Atlantic City*, 152 N.J. 532, 555 (1998)). Additionally, unfitness to hold a position in a school system may be demonstrated through just one incident, “if sufficiently flagrant.” *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (1943), *aff’d*, 131 N.J.L. 326 (E & A 1944).

Here, appellant’s unbecoming conduct is undisputed and demonstrates both a lack of integrity and a serious lapse in judgment. The record shows that, once confronted by police, he admitted that he stole a gold necklace from a private residence he entered without permission and sold the necklace to an unknown person he encountered on the streets of Perth Amboy. His actions demonstrate that he is ill-suited to be a role model for students. Moreover, the Board has previously revoked certificates in matters where certificate holders admitted having committed single incidents of theft or fraud, regardless of their successful completion of PTI or

the existence of criminal charges or convictions. *See, e.g., In the Matter of the Certificates of Diana H. Park*, State Board of Examiners Dkt. No. 1415-260 (March 3, 2016) (revocation of certificates following admission that certificate holder stole funds from a school association, notwithstanding her successful completion of PTI, payment of restitution, and demonstrated remorse); *In the Matter of the Certificate of David Toler*, State Board of Examiners Dkt. No. 669-02/02, OAL Dkt. No. EDE 5946-02, Initial Decision (August 13, 2004), Final Decision (October 28, 2004) (revocation of certificates following admission that certificate holder participated in a scheme to defraud the State Health Benefits Program, notwithstanding his successful completion of PTI and payment of restitution); *In the Matter of the Certificates of William McMeekan*, Commissioner Decision No. 109-16A (March 22, 2016) (affirming revocation of certificates following certificate holder's admission that he removed a computer from school property without permission that was later retrieved from his home by police).

Appellant's contentions to the contrary are unavailing. As discussed above, successful completion of a PTI program does not prevent the Board from acting against the appellant's certificates on the basis of proven unbecoming conduct. *In the Matter of the Certificates of Mary Purcell*, State Board of Examiners, Commissioner Decision No. 73-17A (March 9, 2017), at 4. Nor does the fact that appellant's conditions of PTI did not disqualify him from teaching or require him to surrender his teaching certificates. The PTI proceedings are separate and apart from those initiated by the Board pursuant to its statutory authority to revoke teaching certificates for just cause. *See N.J.S.A. 18A:6-38* (authorizing Board to revoke certificates "under rules and regulations prescribed by the State board"); *N.J.A.C. 6A:9B-4.4* (explaining that the Board may revoke or suspend certificates on the basis of conduct unbecoming a teacher, among other

reasons). Furthermore, it is well-established that “[w]hether or not the incident was connected to appellant’s teaching profession is of no moment; disciplinary action may still be taken for conduct that occurs entirely outside of school or involves people entirely unrelated to school operations.” *In the Matter of the Certificates of Mary Purcell, State Board of Examiners*, at 4.

However, the Commissioner wishes to clarify that the Board should not have based any aspect of its decision on a criminal “conviction” for third-degree burglary since the record lacks evidence of the court’s entry of a judgment of conviction. A guilty plea taken in connection with admission to the PTI program does not automatically result in the entry of a judgment of conviction. “Pursuant to *N.J.S.A. 2C:43-13(b)*, a guilty plea entered as a condition of admission to PTI ‘shall be held in an inactive status pending termination of the supervisory treatment,’ under subsection (d) (successful completion of the program, resulting in dismissal of the charges) or (e) (dismissal from the program, thereby reactivating the charges).” *State v. Lavrik*, 472 *N.J. Super.* 192, 215-16 (App. Div. 2022). “Therefore, the guilty plea has no force or effect, unless PTI is violated. It is neither a judgment of conviction nor an adjudication. If a defendant successfully completes the program, the charges are dismissed.” *Id.* at 216 (quoting Attorney General, *Uniform Guidelines on the Pretrial Intervention Program* at 7 (March 1, 2016) (Directive 2016-2)); *see also R. 3:28-7(b)* (addressing the available dispositions following conclusion of PTI term). Despite the Board’s error in this regard, the Commissioner finds that the sufficient, credible, evidence of appellant’s unbecoming conduct in the record provides ample support for the Board’s decision to revoke appellant’s certificates—even in the absence of a criminal conviction.

In closing, 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 revoking appellant's certificates is affirmed.<sup>2</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2024

Date of Mailing: January 24, 2024

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<sup>2</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.