

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS  
JOHN COSTELLO : ORDER OF SUSPENSION  
\_\_\_\_\_ : DOCKET NO: 1516-165

At its meeting of January 1, 2016, the State Board of Examiners (Board) reviewed a tenure decision regarding John Costello, a tenured school nurse in the Northfield School District (Northfield). Northfield had certified tenure charges against Costello for unbecoming conduct, insubordination, incapacity and other just cause. Pursuant to *N.J.S.A.* 18A:6-16, the Arbitrator assigned by the Department of Education to hear the case, had referred the tenure matter captioned *In the Matter of the Tenure Hearing of John Costello*, Dkt. No. 150-7/15 (Arbitrator's Decision, November 21, 2015) to the Board.

In his Decision (which is incorporated herein by reference), the Arbitrator concluded that Northfield had demonstrated Costello's incapacity. The Arbitrator found that Costello could not handle the increased stress of his position when the district had replaced the other full-time nurse in the district with a part-time nurse. The Arbitrator found that Costello's conduct was totally inappropriate when dealing with a student who had passed out in the hallway as Costello had a letter-sized piece of paper in his mouth during the entire incident and could not have asked anyone any questions to ascertain what had happened. The Arbitrator also found Costello's inability to recall the event nine days later when the Assistant Superintendent questioned him, "cause for concern." The Arbitrator also found that Costello's complaints about a teacher in the presence of a student who had been sent to his office "showed a serious lack of judgment." The Arbitrator noted that Costello blamed his emotional state on medications he was taking but did not introduce independent medical evidence to corroborate his claim.

The Arbitrator also found that "there was a significant breakdown in Costello's health record keeping" and that he "failed to keep up with his ministerial duties in maintaining the nurse's office." The Arbitrator found that Costello was not a reliable witness and that, although he had a long record of satisfactory service with the district, "it is apparent that Costello was unable to competently perform his

duties during the fall and winter of 2014-2015.” The Arbitrator also noted that Costello’s own psychological expert had recommended that Costello undergo counseling to help him cope with stress but there was no evidence that he had done so. The Arbitrator stated that “there is no reason to think that if Costello were returned to the same work situation somehow he would behave any differently.”

Having reviewed the entire record, the Arbitrator found that Northfield had met its burden of proof and he therefore sustained the tenure charges against Costello due to incapacity. Costello was dismissed from his tenured employment with Northfield as a result of the incapacity proven in the tenure proceeding and the Arbitrator transmitted the matter to the Board for its review.

Costello currently holds a School Nurse certificate. After reviewing the above information, at its March 3, 2016 meeting, the Board voted to issue an Order to Show Cause to Costello as to why his certificate should not be revoked. The Order was predicated on the charges of incapacity that had been proven in the tenure hearing.

The Board sent Costello the Order to Show Cause by regular and certified mail on March 8, 2016. The Order provided that Costello’s Answer was due within 30 days. Costello filed his Answer on March 30, 2016.

In that Answer, Costello admitted that Northfield had brought tenure charges against him but denied the district’s allegations that he was incapacitated from performing his job. (Answer, ¶¶ 2, 4, 5). He alleged that the Interim Superintendent and the Board’s expert psychologist had colluded so that the expert knew what language he had to include in his report “to insure [*sic*] that there would not be a finding by the arbitrator that reasonable accommodations could be provided by [Northfield] to enable [me] to return to [my] position.” (Answer, ¶ 4). Costello added that, even if the deficiencies noted by the Arbitrator were true, they did not rise to the level of removing tenure protections. (Answer, ¶ 5). Costello noted that he was denied a fair hearing and due process because the entire process was so tainted by the actions of the Interim Superintendent and Northfield’s “expert.” (Answer, ¶ 9). He therefore contended that just cause did not exist to revoke his certificate. (Answer, ¶ 10).

Subsequently, Costello informed the Board that he was appealing the Arbitrator's decision and the Board placed the certification matter into abeyance. On September 4, 2018, Costello's former attorney notified the Board that the Arbitrator's decision was affirmed on appeal. *Costello v. Northfield Board of Education*, Dkt. No. A-3688-15T3 (App. Div. April 5, 2018) (Unreported Opinion).

Thereafter, pursuant to *N.J.A.C.* 6A:9B-4.6(e), on September 27, 2018, the Board sent Costello a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Costello was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against his certificate as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificate. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Costello's offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Costello was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Costello filed a written response on October 30, 2018. Costello also asked to appear before the Board.

In his Hearing Response, Costello argued that had his counsel properly challenged the "facts" and evidence against him, "that this matter would have turned out differently." (Hearing Response, pp. 1-2). Costello emphasized that the tenure hearing was unfair to him and asserted that "I am not now, nor have I ever been, incapacitated due to physical or psychiatric disease or infirmity." (Hearing Response, p. 2). He claimed that the Arbitrator's decision was flawed as it relied on the "one-sided and biased report" of the Board's expert whom Costello contended was unqualified to evaluate him pursuant to N.J.S.A. 18A:16-2. (Hearing Response, p. 2). Accordingly, Costello argued that if the Board should see fit to act against his certification, that it consider the loss of his job, his tarnished reputation and the hardship that had been placed on his family as sufficient punishment. (Hearing Response, p. 3). Costello also requested and received an extension of time to submit supporting documentation. On December 31, 2018, he submitted

an extensive list of exhibits in support of additional arguments he made challenging each of the tenure charges.

In testimony before the Board, Costello stated that he has been a registered nurse for 34 years and worked in his district for 13 years, from 2001 through 2014. He stated that he had been deemed unfit for duty by a sole psychologist and contested the way the psychological testing was conducted. Costello indicated that he no longer wanted to work as a School Nurse and that he willingly gave up his professional nursing license in New Jersey. He added that he has worked for the Veteran's Administration since August 2016 and submitted reviews of his work there as well as positive Principal evaluations he had received in his district before the tenure charges. Finally, Costello asked the Board for leniency in its decision-making in his case.

The threshold issue before the Board in this matter, therefore, is whether Costello's conduct constitutes incapacity of a certificate holder. At its meeting of April 12, 2019, the Board considered the allegations in the Order to Show Cause as well as Costello's Answer, Hearing Response and testimony. The Board determined that it was constrained by collateral estoppel to accept the facts as found in the tenure hearing and therefore no material facts related to Costello's offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17, 2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings). Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Costello's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against his certificate pursuant to *N.J.A.C. 6A:9B-4.5*. The Board finds that it does.

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*. In this case, the record established several deficiencies on Costello's part in carrying out his school nurse duties. However, given Costello's lengthy record and prior positive evaluations in the district, the

Board therefore is convinced that the appropriate response in this matter is a two-year suspension of Costello's certificate.

Accordingly, on April 12, 2019, the Board voted to suspend John Costello's School Nurse certificate for two years. On this 17th day of May 2019 the Board voted to adopt its formal written decision and it is therefore ORDERED that Costello's certificate is hereby suspended for two years, effective immediately. It is further ORDERED that Costello return his certificate 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.

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Rani Singh, Acting Secretary  
State Board of Examiners

**Date of Mailing:**  
**Via certified and regular mail**

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