

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
KATHLEEN VALENCIA : ORDER OF SUSPENSION  
\_\_\_\_\_ : DOCKET NO: 1819-194

At its meeting of May 17, 2019, the State Board of Examiners (Board) reviewed information it received regarding Kathleen Valencia. The Union City Township School District (Union City) certified tenure charges of unbecoming conduct and other just cause against Valencia, after an undercover video (which is incorporated herein by reference) was published on YouTube depicting Valencia, the district's Union president, encouraging the cover up of an alleged assault on a student; encouraging the non-reporting of an alleged assault on a student; recommending that the teacher lie about the student and making disparaging comments about students.

Pursuant to *N.J.S.A.* 18A:6-16, the Arbitrator assigned by the Department of Education to hear the case, referred to the State Board of Examiners (Board) the tenure matter captioned *In the Matter of the Tenure Charges Against Kathleen Valencia*, Dkt. No. 160-7/18 (Arbitrator's Decision, November 20, 2018). Union City alleged that, Valencia had: encouraged the cover-up of an alleged assault on a student by creating a false scenario of the incident; encouraged the non-reporting of an alleged assault on a student and instead recommended that the teacher lie about the incident if ever questioned; promoted the idea of the teacher giving the student a passing grade to get the student out of the class; made false and misleading statements about the facts/discipline incurred by a teacher "who had sex with a student;" referred to students in the district as "dirtbags" and "scumbags" and referred to homes she had visited as a home instructor for the district as "shitholes."

In her Decision (which is incorporated herein by reference), the Arbitrator found that Union City had proven only the charges related to Valencia's comments referring to students as "scumbags" and "dirtbags" and their homes as "shitholes." The Arbitrator ruled that Valencia's actions in making derogatory comments about Union City students and their housing constituted unbecoming conduct, but that mitigating factors, including Valencia's prior long and unblemished record, militated against termination. The Arbitrator ordered that Valencia should forfeit her 2018-2019 salary increment and was not entitled to any backpay for the period of time she was on leave of absence from Union City.

Valencia currently holds a Teacher of Social Studies and Teacher of Elementary School in Grades K-8 Certificates of Eligibility with Advanced Standing and a Teacher of Social Studies certificate. After reviewing the above information, at its June 28, 2019 meeting, the Board voted to issue an Order to Show Cause to Valencia as to why her certificates should not be revoked.

The Board sent Valencia the Order to Show Cause by regular and certified mail. The Order provided that Valencia must file an Answer within 30 days. Valencia responded on September 6, 2019. In her Answer, Valencia admitted that the tenure charges were certified but denies that she engaged in any unbecoming conduct or other just cause for the tenure charges. *See Answer at* ¶ 2, 3, 4, 5. She further denies that just cause exists for consideration of the revocation of her certificates. *Id.* at ¶ 7. She also included five (5) affirmative defenses.

Given the nature of the affirmative defenses, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. On August 26, 2020, ALJ Margaret M. Monaco issued an order granting the Board's partial summary decision. ALJ Monaco applied the doctrine of collateral estoppel which barred the re-litigation of the facts. The hearing regarding the penalty in this matter was held via Zoom on February 17, 2021. The record closed on July 30,

2021 and ALJ Monaco issued an Initial Decision on October 28, 2021. *In the Matter of the Certificates of Kathleen Valencia*, Dkt. No. EDE 13241-19 (Initial Decision, October 28, 2021).

During the hearing, Valencia testified on her own behalf and offered testimony by two (2) coworkers. The Board did not offer witnesses. The ALJ found Valencia's witnesses to be "candid, credible, probable, and persuasive." *See* Initial Decision at p. 6. Based upon these credibility findings, the ALJ determined that Valencia has no complaints regarding her performance as a teacher. *Id.* at p. 7. Valencia has been in the classroom for two (2) years since this incident and no student has complained about her. *Id.* She indicates she has a great relationship with her students and parents. No administrator has complained of her. Her evaluations have her rated as "highly effective." *Id.*

A witness testifying on behalf of Valencia described her as "a good friend and a guide." *Id.* at p. 10. He testified that he believed she had a good relationship with her students. *Id.* He stated that one incident does not provide an adequate picture of who Valencia is as a person. *Id.* Another witness described Valencia as dedicated to her students. *Id.* at p. 11. Further, this witness testified she has never known Valencia to disparage students or families to her or other people. *Id.*

During the hearing, Valencia admitted that she made the comments about the students and their homes. *Id.* She acknowledged that there needed to be some punishment because she embarrassed herself and her district. She indicated she believed the Arbitration decision was "fair." *Id.* She expressed regret for her actions and indicated she wishes she could take that day back. *Id.* at p. 12.

ALJ Monaco found that the facts of this case demonstrate that Valencia engaged in conduct unbecoming a teacher. *Id.* at p. 13-14. The issue is whether there should be any sanction against her license for the unbecoming conduct. *Id.* at p. 14. She found that revocation or suspension is

a more severe sanction than a teacher's loss of tenure. *Id.* at p. 15. The arbitrator had concluded that termination of tenure was too harsh a penalty given the mitigating circumstances. Accordingly, ALJ Monaco found that Valencia's unbecoming conduct does not warrant action against her teaching certificates. *Id.*

ALJ Monaco further found that although Valencia's conduct was "undoubtedly misguided and inappropriate," there are several mitigating factors. *Id.* Specifically, Valencia has a lengthy career as a teacher without any prior discipline. There are no complaints from students, parents, faculty, or administrators regarding her teaching. *Id.* Further, Valencia accepted responsibility for her comments and poor judgment. *Id.* She served a suspension without pay and forfeited a salary increment and resigned her position as union president. In conclusion, ALJ Monaco indicated that Valencia's "conduct is not sufficiently flagrant in and of itself to warrant the suspension or revocation of her teaching certificates." *Id.* at p. 16.

The Deputy Attorney General (DAG) representing the Board filed Exceptions. In the Exceptions, the DAG argued that Valencia's conduct was sufficiently egregious to warrant revocation. *See* Exceptions at p. 4. It was argued that although the statement regarding students was not made directly to students, parents or faculty, it was publicly available via YouTube. *Id.* at p. 5-6. Additionally, revocation is still an appropriate penalty regardless of a successful teaching history. *Id.* at p. 7 (citing *In Re Robert Klein*, EDE 09566-17, Initial Decision (May 21, 2019)). Moreover, the exceptions argue that ALJ Monaco failed to take into consideration the biases of Valencia's witnesses as they testified to being good friends with her. *Id.*

Finally, the exceptions indicate that the matter should not be dismissed where unbecoming conduct has been found. *Id.* at p. 10. Valencia's conduct was indicative of poor judgment and a

disregard for student's feelings. *Id.* The mitigating factors do not outweigh the lack of judgment and egregiousness of Valencia's behavior.

Valencia filed a Reply to the Exceptions. Valencia indicates that ALJ Monaco "properly relied on the nature of the offense and mitigating factors when reaching her decision." *See* Reply Exceptions at p. 3. Valencia argues that case law indicates reliance upon the mitigation testimony and evidence is appropriate. *Id.* None of the cases cited in the Exceptions compel a different result in this case. *Id.* at p. 4. The reply argues that reliance upon *In Re Robert Klein* is inappropriate because that case involved violation(s) of a criminal nature. Moreover, Valencia argues that ALJ Monaco properly evaluated the testimony of Valencia's witnesses. *Id.* at p. 6.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of January 21, 2022, the Board reviewed the Initial Decision. After full and fair consideration of the ALJ's Decisions, the Exceptions, and the Reply, the Board voted to adopt the Initial Decision, with modification as to penalty.

"Teachers ... 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." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. The Board recognizes that Valencia has an otherwise unblemished record, positive evaluations, and appears to currently have good relationships with students, parents and administration.

After reviewing the entire record, the Board agrees with the ALJ's assessment regarding the highly inappropriate nature of Valencia's conduct and agrees that her conduct constitutes

unbecoming conduct. However, the Board diverges with the ALJ's evaluation of the proper resultant penalty and believes that suspension for 2 years is warranted here.

Certainly, Valencia's current success, evaluations, and positive relationships mitigate the penalty in this matter. They do not, however, outweigh the egregious nature of her comments; comments she admitted to making and acknowledges with regret. The Board agrees with Valencia that a response to her unbecoming conduct is warranted here. However, the Board believes that the penalty from the arbitrator and the ALJ was insufficient.

The Board is not bound to the penalty assessed by an Arbitrator as it relates to a challenge on an educator's tenure. Strict adherence to an arbitrator's determination of penalty in a tenure matter essentially hamstring the Board from exercising its responsibility and statutory authority on revocation/suspension of educator certificates, usurping the Board's expertise and authority on these matters. The Board is a separate body with a separate purpose and applies its own, independent analysis and decision as to whether specific conduct warrants action on an educator's teaching certificates. The "responsibility of the [Board] under N.J.S.A. 18:6-38 is not the same as the Commissioner's obligation to determine the appropriate penalty once tenure charges brought against a teaching staff member have been sustained." *IMO Theresa Lucarelli*, Dkt. No. 2-99 (State Board of Education Decision, May 5, 1999), citing *IMO John Ahern*, Dkt No. \_\_\_\_ (State Board of Education Decision, August 5, 1987). Accordingly, the Board disagrees with the penalty assessed by the Arbitrator and likewise by the ALJ.

Unbecoming conduct is an "elastic" phrase, encompassing conduct that "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). Importantly, a finding of unbecoming conduct does not

require violating a regulation or law, but can be based on an implied 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.” Ibid.

Allegations of unbecoming conduct call into question a teacher’s fitness to discharge the duties and functions of his or her position. In re the Certificate of Fargo, 91 N.J.A.R.2d (EDE)

1. Unfitness to hold a position in a school can be demonstrated by a series of incidents, or one single incident that is sufficiently flagrant. Redcay v. State Bd. of Educ., 130 N.J.L. 369, 371 (Sup. Ct. 1943), aff’d, 131 N.J.L. 326 (E. & A. 1944). An appropriate remedy is based upon the totality of the circumstances.

Valencia’s comments about students may not have been intended for a public setting but ended up there via the internet; the comments are/were available for members of the community, students, staff, parents, etc. to view and hear. Although Valencia’s conduct was not criminal in nature nor violative of a law or regulation, as was the case *In Re Robert Klein*, her comments in that specific setting demonstrate a serious lack of judgment that warrants suspension. Her comments destroy respect for public employees and confidence in such services by parents, students and community members.

Accordingly, on January 21, 2022, the Board voted to adopt the Initial Decision with modification as to penalty and ordered the suspension of Valencia’s certificates for two (2) years. On this 4<sup>th</sup> day of March 2022, the Board formally adopted its written decision to adopt the Initial Decision with modification and it is therefore ORDERED that Kathleen Valencia’s Teacher of Social Studies Certificate of Eligibility with Advanced Standing, Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing and Teacher of Social Studies Certificate are hereby suspended for a period of two (2) years, effective immediately. It is further ordered

that Valencia return her certificates 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, Secretary  
State Board of Examiners

RS/KAG/cf

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

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