

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
JAMES MCMULLAN : ORDER OF SUSPENSION
_____ : DOCKET NO: 1920-119

At its meeting of December 13, 2019, the State Board of Examiners (Board) reviewed information it received regarding James McMullan from the Oakland Board of Education (Oakland). McMullan was a tenured teacher in Oakland who resigned his position as a result of allegations of unbecoming conduct. Pursuant to the information received from Oakland, Oakland alleged that McMullan mimicked/mockered students during class and/or on various occasions. In July 2011, the Superintendent made a recommendation to withhold McMullan's increment due to allegations of concerning interactions with students, unsatisfactory teaching performance, unprofessional, unproductive, and undisciplined behaviors and failure to follow district reporting procedures as outlined in a July 18, 2011 letter from then Superintendent Dr. Richard Heflich.

On October 30, 2018, McMullan allegedly removed a 4th grade student from his social studies class and required that he remain in the hallway without supervision because the student was unable to complete a task in the classroom. McMullan initially denied this allegation, but when faced with a possible witness to the conduct he admitted that he removed the child and let the child remain in the hallway(s) unsupervised. McMullan was suspended with pay on November 2, 2018 as a result of this incident. McMullan was later reassigned to the middle school and placed on a professional improvement plan.

On November 26, 2018, McMullan allegedly asked a student to "pick his head up" and engage in the lesson. When the lesson was over McMullan said to the student "now you pick your

head up? If you keep acting this way you are going to be sent to a special school.” Oakland determined that the statement served no educational purpose and only humiliated the student. As a result of these allegations, Oakland recommended that McMullan have his increment withheld for the 2019-2020 school year.

On April 15, 2019, students reported that McMullan was mimicking and mocking a student during class. Specifically, a student reported that after the student said “sorry” McMullan repeated “sorry” in a high-pitched voice. McMullan also threatened to reduce the grade of the student in front of the class. Student witnesses reported that McMullan was trying to be funny or was making fun of the student. One student witness stated “I would probably have been crying.” The student victim stated that “[w]hat made me uncomfortable the most and upset were other classmates were laughing and he seemed to enjoy making fun of me.”

Accordingly, Oakland conducted a Harassment, Intimidation and Bullying investigation. On April 26, 2019, the investigation determined that McMullan intentionally engaged in harassment, intimidation, or bullying behavior but had no awareness of the potential negative impact to the victim.

McMullan is the holder of a Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing, Teacher of Elementary Grades K-8, Supervisor, and Principal Certificate of Eligibility.

The Board sent McMullan the Order to Show Cause by regular and certified mail on December 17, 2019. The Order provided that McMullan must file an Answer within 30 days. McMullan responded on January 20, 2020. In his Answer, McMullan admitted that he resigned his position, but denied the allegations of conduct. (Answer, ¶ 3). He also admits to the increment withholding, the suspension with pay, and the improvement plan, but denies the alleged conduct

that gave rise to the discipline. *Id.* at ¶ 5, 6, 7. McMullan further denies the allegations that formed the basis for the HIB investigation and findings. *Id.* at ¶ 9. McMullan indicates that the HIB investigation was a vehicle for the Oakland to remove him. *Id.* at ¶ 10.

Since there were material facts in dispute, on January 30, 2020, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. ALJ Dean J. Buono heard the matter on March 1, 2021, July 13, 2021, and June 21 and 22, 2022. The record closed on November 16, 2022. ALJ Buono issued an Initial Decision on December 20, 2022. *In the Matter of the Certificates of James McMullan*, Dkt. No. EDE 01394-20, Agency Dkt. 1920-119 (Initial Decision, December 20, 2022).

After reviewing the testimony and the record, ALJ Buono found that McMullan engaged in conduct unbecoming a teacher. *Id.* at p. 16. McMullan had inappropriate contact with a student, demeaned a student with a learning disability in front of other students, locked a student out of the classroom and conduct himself unprofessionally. *Id.* ALJ Buono found that McMullan’s conduct demonstrated “extremely poor judgment” that falls short of the expectations of an educator. *Id.*

ALJ Buono found that the testimony of the Board’s witnesses was “especially credible and persuasive.” *Id.* at p. 13. He indicated it was clear that the Board’s witnesses had concerns about the incidents involving McMullan as well as the safety and security of the children in the district. *Id.* Further, he determined that the testimony of McMullan’s witnesses was “less than credible.” *Id.*

Notably, ALJ Buono found that McMullan’s “own testimony was not credible in terms of his factual recitation nor in the manner in which it was given.” *Id.* ALJ Buono found that McMullan’s testimony assisted the Board in proving the facts of the case; McMullan was evasive

and attempted to “spin the facts in his favor.” *Id.* McMullan “portrayed himself as the victim and this whole thing was everyone else’s fault but his own.” *Id.* at p. 14.

Based upon the credibility determinations, ALJ Buono found that McMullan exercised poor judgment by yelling at a student; mocking a student and embarrassing him in front of the entire classroom; leaving a student unsupervised in the hallway with locked classroom doors while the student was out of sight; falsifying facts about the incident to the building principal; and ripping a book out of a student’s hands in front of other students. *Id.* ALJ Buono found that “any medical condition that McMullan may be afflicted with has no bearing on his ability to perform his job as a teacher.” *Id.*

In assessing the appropriate penalty, ALJ Buono found that the conduct “is so egregious that it shocks the conscience.” *Id.* at p. 15. McMullan’s defense relating to his medical condition and teaching style is “preposterous.” *Id.* Additionally, ALJ Buono determined that McMullan’s conduct had an impact on the administration of the education and emotional development of children, as well as the safety of the school. *Id.* at p. 16. McMullan filed Exceptions and the Deputy Attorney General (DAG) representing the Board filed Reply Exceptions.

In his Exceptions, McMullan argued that the Board should make additional findings of fact consistent with the record. *See* Exceptions at p. 1. McMullan includes a detailed list of proposed findings of fact relating to McMullan’s employment, prior discipline, medical condition, student conduct that may have elicited response(s) from McMullan, as well as information on his current employment performance and status. *Id.* at p. 2-6.

McMullan also argues that ALJ Buono’s decision contains misstatements that deem the decision arbitrary and capricious. *Id.* at p. 6. Specifically, McMullan argues that the decision improperly notes that revocation was a potential penalty and improperly recites McMullan’s

disciplinary history. *Id.* at p. 7-9. McMullan also argues that the ALJ's credibility assessments were improper. *Id.* at p. 9. Further, McMullan disagreed with the finding that McMullan's conduct was so egregious that it shocks the conscience or that McMullan used his medical condition as a defense for his conduct. *Id.* at p. 17-23. Finally, McMullan argues that ALJ Buono failed to account for the mitigating factors, including McMullan's remorse and his efforts to improve his teaching. *Id.* at p. 28.

In the Reply Exceptions, the DAG argued that the initial decision should be affirmed because it was not arbitrary, capricious, or unreasonable and the findings are supported by credible evidence. *See* Reply Exceptions at p. 12. The DAG argued that the ALJ properly assessed witness credibility and the findings of facts are based upon same. *Id.* at p. 12-17. Further, there should be no additional findings of fact which have no bearing on the decision. *Id.* at p. 19. Notably, the reply provides several cases of precedential value wherein educators were suspended for conduct including threats to kick a student's ass, ridiculing a student's name online, and pulling on student's clothing. *Id.* at p. 21 (citing *IMO Certificates of Steven E. Roth, Jr.*, Docket no. 1516-129 (Bd. of Exam'rs, May 20, 2016; *IMO Certificate of Yvette Nichols*, Docket No. 1314-170 (Bd. of Exam'rs, October 23, 2014)).

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of March 3, 2023, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision, 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. An agency head should not disturb the credibility determinations that are made after properly considering witness testimony and demeanor during a hearing. *H.K. v. State, Dep't of Hum. Servs., Div. of Med. Assistance & Health Servs.*, 184 N.J. 367, 384 (2005).

As noted above, after assessing the evidence and credibility of the witnesses, ALJ Buono concluded that McMullan's testimony, and the testimony of his witnesses, was not credible. ALJ Buono specifically found that the Board's witnesses testified credibly and demonstrated concern regarding McMullan's conduct. Although the exceptions argue that the Board should make additional findings of fact and/or set aside the credibility determinations made by ALJ Buono, the Board is not persuaded that there is a sufficient basis to do so. McMullan has not demonstrated that such determinations are arbitrary, capricious or unreasonable and are unsupported by sufficient evidence in the record. *Id.* Accordingly, the Board will defer to ALJ Buono's credibility determinations and findings of fact.

After reviewing the entire record, the Board agrees with the ALJ's assessment regarding McMullan's unbecoming conduct but disagrees with the appropriate resultant penalty. The Board issued the Order to Show Cause for suspension, not revocation. An indefinite suspension is tantamount to a revocation. Accordingly, the Board believes a suspension with a finite term is appropriate in light of the conduct.

After reviewing the unbecoming conduct in this case, the Board determined that a suspension of 2 years is appropriate. McMullan received prior warnings and reprimands for his conduct; he was aware of his employer's expectations regarding his behavior, but he still did not exercise control of his responses/behaviors to the detriment of his students.

The Board finds that McMullan's conduct is similar to the facts of In the Matter of the Certificates of Steven E. Roth, Agency Dkt. No. 1516-129 (Bd. of Exam'rs, June 23, 2016). In that matter, the Examiners issued an OTSC against Roth based upon disparaging and intimidating conduct that Roth exhibited toward a student in the presence of his classmates. Roth called the student "special" and "not normal" and said that if he has anything to say in response he would "kick his ass to kingdom come until he is 80 years old." Roth also told the student that he would never make it back to his sending district and would never recommend that he go back. These interactions occurred in front of classroom full of students. Roth received a three-year suspension of his certification.

Another comparable matter is that of In the Matter of the Certificates of Lat Sall, Agency Docket No. 1516-106 (Bd. of Exam'rs, January 19, 2017). In that matter Sall was involved in a verbal altercation with a student. When the student left the area, Sall followed the student yelled at her "you're dirty and stink, go home and take a shower," leaned over the railing and spit on her. The behavior was witnessed by another student. Sall received a two-year suspension of his certificates.

The Board finds that the *Roth* and *Sall* cases inform the length of suspension herein. Accordingly, the Board therefore believes that a fitting penalty in this matter is a 2-year suspension of McMullan's certificates.

Accordingly, on March 3, 2023, the Board voted to adopt the Initial Decision with modification as to penalty and ordered a 2-year suspension of McMullan's certificates. On this 13th day of April 2023, the Board formally adopted its written decision to adopt, with modification as to penalty, the Initial Decision in this matter and it is therefore ORDERED that James McMullan's Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing,

Teacher of Elementary Grades K-8, Supervisor, and Principal Certificate of Eligibility are hereby SUSPENDED for a period of 2 years, effective immediately. It is further ordered that McMullan return his 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.

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.