

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
BRETT R. YAVENER : ORDER OF REVOCATION
_____ : DOCKET NO: 2122-191

At its meeting of June 30, 2020, the State Board of Examiners (Board) reviewed the decision it received in *In the Matter of the Tenure Charges Against Brett Yavener* (Opinion and Order Re: Approval of Negotiated Settlement, May 6, 2022). The Toms River Board of Education (Toms River) certified tenure charges against Brett R. Yavener on June 21, 2021 for allegedly failing to comply with Individualized Education Program (IEP) documents and timelines, maintaining appropriate communication, following directives, drafting IEPs; insubordination and unbecoming conduct; offensive and unprofessional conduct; and undermining parent confidence in teacher protocols. On May 6, 2022, the Arbitrator approved a Separation Agreement wherein Yavener resigned from his position with the district.

Yavener currently holds a School Social Worker certificate. After reviewing the above information, at its June 30, 2022 meeting, the Board voted to issue an Order to Show Cause (OSC) to Yavener as to why his certificate should not be revoked.

The Board sent Yavener the OSC by regular and certified mail on August 15, 2022. The OSC provided that Yavener must file an Answer within 30 days. The certified green card was returned and the regular mail was not returned. The Board sent Yavener a second notice on September 22, 2022. The certified green card was returned as “Undelivered” and the regular mail

was not returned. Yavener responded on September 30, 2022 and thereafter provided an additional response.

In his Answer, Yavener vigorously denied the truth of the allegations in the tenure charges and claimed they were exaggerated and politically motivated to silence his concerns with the district. *See Answer*, ¶ 2. Yavener claimed the tenure charges were misleading and did not account for his successful years of teaching. *Id.* at ¶¶ 3-4. He claimed he acted with the upmost professionalism. *Id.* at ¶ 5. Further, he claimed he was assigned increasingly complex cases and would not have disregarded his supervisor's instruction if the building had not been short-staffed. *Id.* at ¶ 6. Due to increased case management, he was forced to admit to a parent that he didn't have space in his calendar. *Id.* at ¶ 7. Yavener stated he settled the tenure charges which dictated he would resign. *Id.* at ¶ 8. He further stated that just cause did not exist for the revocation of his certificate. *Id.* at ¶ 9.

Since there were material facts in dispute, on November 28, 2022, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case.

Yavener attempted to file a verbal motion to dismiss, on August 10, 2023 and the ALJ advised that any motion had to comport with New Jersey Rules of Court. *Id.* at 3, 8. The ALJ issued an Order on August 11, 2023 denying his motion. *Id.* at 8. On September 8, 2023, Yavener attempted to file a written motion to dismiss that was improper and missing key informational and service elements. *Ibid.* On October 27, 2023, the ALJ denied Yavener's motion because he failed to identify legal grounds for dismissal, attach supporting documents and a certification or affidavit, and address the specific charges levied against him. *Ibid.*

Yavener failed to respond to requests for admission the DAG propounded. *Id.* at 8. Further, Yavener disregarded the ALJ's August 11, 2023 Order to comply with the discovery requests. *Id.* at 9. As a result, the ALJ deemed the requests admitted. *Ibid.*

The Deputy Attorney General (DAG) representing the Board moved for summary decision on October 16, 2023. *Ibid.* Yavener filed a response on October 25, 2023. *Id.* at 3. On October 27, 2023, Administrative Law Judge (ALJ) Jeffrey N. Rabin issued an Initial Decision in the case. *In the Matter of the Certificate of Brett R. Yavener*, Dkt. No. EDE 10574-22 (Initial Decision, October 27, 2023).

After reviewing the testimony and the record, the ALJ found that Yavener's response did not address or refute the facts asserted by the DAG, did not address the charges against him, and did not state that there was a genuine issue of fact requiring a full hearing. *Id.* at 10. Rather, Yavener claimed he was being punished for trying to expose a conspiracy between Toms River, the Department of Education, the Attorney General's office, and the OAL, to cover up malfeasance in the operation of the special education system. *Ibid.* The ALJ noted that Yavener never provided documentary proof that he ever took formal action to report issues with how Toms River effectuated special education policies or address malfeasance in the workplace, or that he filed a whistleblower suit. *Id.* at 11. Accordingly, the ALJ concluded there were no retaliatory actions taken against Yavener. *Ibid.*

Further, the ALJ found that Yavener failed to meet his burden to make an affirmative demonstration that the facts are not as presented by the DAG in his motion for summary decision. *Ibid.* As to whether the DAG met his burden, the ALJ found the DAG was correct that there was no dispute as to any material fact in this matter. *Ibid.* The ALJ concluded that, because Yavener

failed to comply fully with discovery requests, coupled with his failure to dispute the facts as listed, and failed to dispute the allegations, there were no issues of genuine material facts remaining in this matter. *Id. at 12*. Thus, the ALJ granted the DAG's motion for summary decision. *Id. at 14*.

Yavener's job performance and behavior was consistently subject to criticism during his 11 years at Toms River, 2009 through 2021, receiving less than satisfactory evaluations. *Id. at 12*. In the 2011-2012 school year, for example, he was issued a formal warning for inflammatory language and acts of insubordination. *Ibid.* Yavener also failed to carry out his job responsibilities in the 2016-2017 school year, *id. at 13*, and was issued two formal warnings in the 2017-2018 school year for his inability to comply with mandatory timelines, follow directives, and complete acceptable and compliant IEPs. *Ibid.* In the 2018-2019 school year, Yavener was placed on a corrective action plan (CAP) and, because his performance did not improve thereafter, he was issued a third formal warning regarding job performance and behavior, including making false representations to parents during an IEP meeting. *Ibid.* The CAP was continued during the 2019-2020 school year because Yavener failed to meet his obligations under the plan. *Ibid.* Although Toms River reduced his case load Yavener still failed to completely execute his duties, providing counseling services to only a single student in the first four months of the school year. *Ibid.* A fourth formal warning was issued when he missed several sessions with students. *Ibid.* A suspension and negative evaluations followed without any positive change in Yavener's behavior. *Ibid.*

After reviewing numerous cases identified by the DAG, the ALJ concluded that Yavener's continuing pattern of unacceptable behaviors and poor work performance demonstrate conduct

unbecoming warranting revocation. *Id.* at 14. Neither party filed exceptions to the ALJ's Initial Decision.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of January 19, 2024, the Board reviewed the Initial Decision and the Exceptions. After full and fair consideration of the Decision and Exceptions, the Board voted to adopt the Initial Decision and accept the recommended penalty of revocation.

The Board's long-standing belief is that teachers must serve as role models for their students. "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. A "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" may provide the basis for a finding of unbecoming conduct. *Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4, 14 (2017) (quoting *Karins v. City of Atlantic City*, 152 N.J. 532, 555 (1998)) (internal quotation marks omitted). The "elastic" concept of "conduct unbecoming" 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) (internal quotations and citations omitted); *see also Bound Brook Bd. of Educ.*, 228 N.J. at 13.

As noted above, after reviewing the record, the ALJ concluded that the record established that Yavener continued a pattern of unacceptable behaviors and poor work performance in his

dealings with students. The Board finds that Yavener's conduct does not comport with "role model" behavior.

In this case, Yavener's failure to complete acceptable and compliant IEPs over multiple years, using inflammatory language, and making false representations to parents in an IEP meeting, among other acts, is certainly unbecoming of a teacher. The Board agrees with the ALJ that the appropriate penalty is revocation of his educator certificate.

Accordingly, on January 19, 2024, the Board voted to adopt the Initial Decision and ordered a revocation of Yavner's certificate. On this 1st day of March 2024, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that Brett R. Yavener's School Social Worker certificate is hereby REVOKED, effective immediately. It is further ordered that Yavener 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.

Rani Singh, Secretary
State Board of Examiners

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.