#389-13A (SBE Decision: http://www.state.nj.us/education/legal/examiners/2013/apr/1112-103.pdf)

STATE BOARD OF EXAMINERS DKT. NO. 1112-103;
COMMISSIONER APPEAL NO. 4-5/13A

IN THE MATTER OF THE REVOCATION:
OF THE TEACHING CERTIFICATES OF :
JUDAH LANDA. :

COMMISSIONER OF EDUCATION

DECISION

Appellant challenges the determination of the New Jersey State Board of Examiners (Board of Examiners) that the facts underlying the revocation of his teaching and administrative certificates in the State of New York warrant revocation of his New Jersey teaching and supervising certificates. The Commissioner has thoroughly reviewed the record of the proceedings before the Board of Examiners, and the parties' appellate papers, and concurs with the Board of Examiners' holdings.

Pursuant to *N.J.A.C.* 6A:9-17.6(a)(4), the Board of Examiners may issue an Order to Show Cause to a certificate holder if it believes – as a result of having received notice that action was taken against the holder's certificates in another State – that the holder has engaged in conduct warranting suspension or revocation. Accordingly, on April 17, 2012 – after the Board of Examiners learned of the revocation of appellant's New York certificates – it served on appellant an Order to Show Cause why his New Jersey certificates should not be revoked. Appellant answered in May 2012.

On August 20, 2012, after reviewing information relating to the revocation of appellant's certificates, the Board of Examiners sent appellant a "hearing notice" advising that it

had found the facts of his case to be undisputed. In the notice the Board explained that appellant was entitled[1]

> to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder as well as arguments with regard to the appropriate sanction in the event the Board determined to take action against his certificates.
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> *In the Matter of the Certificates of Judah Landa*, Board of Examiners Revocation Order dated April 12, 2013, Docket No. 1112-103, at 2.

Appellant was also offered the opportunity to appear in person at a Board of Examiners meeting to give testimony concerning the issue of sanctions. (*Id.* at 3)

The record reveals that the undisputed facts to which the Board of Examiners referred in its August 20, 2012 notice was the touching and kissing of one of appellant's Midwood High School students on February 7, 2000, in Brooklyn, New York. The student had reported the conduct to the Midwood High School authorities who, in turn, brought charges against appellant, alleging 1) conduct unbecoming a teacher, 2) conduct prejudicial to the good order, efficiency and discipline of the service, 3) insubordination, and 4) just cause for termination. After a two-day plenary hearing within the New York State Education Department in January 2001, a New York State impartial hearing officer issued a March 8, 2001 decision and report 1) finding that appellant had perpetrated the alleged conduct, 2) concluding that the charges against him were proven, and 3) determining that the appropriate penalty was termination of his employment.

Among the many bases for the hearing officer's decision was the fact that he found appellant to be far less credible than the complainant student and the other witnesses against him. Further, among the reasons for the hearing officer's determination that appellant's employment should be terminated was his conclusion that:

[1] Pursuant to *N.J.A.C.* 6A:9-17.7(e).

> The issue of Landa's potential for rehabilitation seems to be a dead issue. He failed to take to heart [an] earlier written reprimand.[2] He consistently denied wrongdoing, except for a single harmless act and he delivered untruthful testimony in an attempt to save himself even though it denigrated his student.
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> *In the matter of the Charges Preferred by the BOARD OF EDUCATION OF THE CITY OF NEW YORK vs. JUDAH LANDA*, Hearing Officer's Findings of Fact and Decision dated March 8, 2001, Docket No. SED 4021, at 16.

On September 18, 2012, appellant provided a written response to the Board of Examiners' hearing notice. He subsequently appeared at the January 25, 2013 meeting of the Board of Examiners to give testimony. Appellant's written submissions and his testimony essentially reiterated the denials and arguments which he had presented at the above-referenced plenary hearing before the impartial arbiter in New York. On February 28, 2013, after consideration of the matter, including appellant's assertions, the Board of Examiners voted to revoke appellant's certificates. On April 12, 2013 it voted to adopt its formal written decision, and on April 30 it mailed its report to appellant.

In appellant's challenges to the Board of Examiners' decision he continues to deny the findings of the impartial arbitrator in the 2001 New York Education Law proceeding, objects to the Board of Examiners' references to the letter of reprimand in his personnel file at Midwood High School, and maintains that his conduct was not "flagrant" enough to warrant revocation of his certificates. The Commissioner finds these contentions to be without merit.

The conduct which had been alleged by appellant's student in 2000 was substantiated after a plenary hearing during which appellant had the opportunity to give evidence and cross examine adverse witnesses. No reason has been presented that would require the Commissioner to second guess the New York impartial arbitrator. Appellant is not entitled to

[2] It is undisputed that a reprimand letter had been issued to appellant on June 23, 1998. According to the New York independent hearing officer, the Midwood High School Principal had testified that the June 1998 reprimand letter had been precipitated by an incident similar to the one which was the subject of the January 2001 plenary hearing.

another plenary hearing to retry the facts, nor could such a hearing take place with only the appellant's version of the facts before the Commissioner.

Further, as referenced above, a reprimand letter had been issued to appellant on June 23, 1998, which letter – according to the 2001 testimony of the Midwood High School Principal – had also related to appellant's inappropriate behavior toward a student or students. Notwithstanding that the letter has been characterized differently by different witnesses, said letter warned appellant about the kind of behavior of which he was later found guilty in 2001. It was thus appropriately considered by the impartial New York hearing officer in determining whether to terminate appellant's employment.

Finally, appellant's assertion that his behavior was insufficiently flagrant to warrant revocation of his certificates depends on acceptance of his version of the facts. However the New York impartial arbitrator did not accept appellant's version, and there was no reason for the New Jersey Board of Examiners to ignore the determinations of the New York authorities. In short, after due process and a plenary hearing was afforded appellant, he was found guilty of unbecoming conduct. That conduct was found by the New York Commissioner of Education to warrant revocation of appellant's New York certificates, and served as the basis for the New Jersey Board of Examiners to revoke appellant's New Jersey certificates.

The Commissioner is not persuaded that there is any reason to disturb the decision of the Board of Examiners. Accordingly, said decision is affirmed and the appeal is dismissed.

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: November 6, 2013
Date of Mailing: November 7, 2013

[3] Pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Appellate Division of the Superior Court.