

STATE BOARD OF EXAMINERS DOCKET NO. 1314-208
AGENCY DOCKET NO. 3-4/15A

IN THE MATTER OF THE SUSPENSION :
OF THE CERTIFICATES OF : COMMISSIONER OF EDUCATION
JENNIFER CORNINE BY THE : DECISION
STATE BOARD OF EXAMINERS. :

Order of Suspension by the State Board of Examiners, March 12, 2015

For the Respondent-Appellant, Stephen B. Hunter, Esq.

For the Petitioner-Respondent State Board of Examiners, Frederick H. Wu,
Deputy Attorney General (John Jay Hoffman, Acting Attorney General of
New Jersey)

Appellant challenges the determination of the New Jersey State Board of Examiners (Board) that her actions warranted the suspension of her Teacher of Television Production Technology Certificate of Eligibility and Teacher of Television Production Technology certificate for three years. On appeal, the appellant maintains that the Board's decision to suspend her certificates was arbitrary, capricious and unreasonable. Specifically, the appellant argues that the Board acted in an arbitrary and capricious manner when it failed to consider mitigating factors, as set forth in *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967). (Appellant's brief at 2-14) For example, the appellant contends that if her teaching certificates are suspended, she "is facing the loss of her employment career because of the effects of a bipolar disorder that was not diagnosed until several months after the February 15, 2013 incident that resulted in the [a]ppellant being charged with endangering the welfare of a child by driving under the influence of alcohol." (*Id.* at 9-10) Appellant offers a comparison between herself and

another case that she contends is analogous to hers, in which the Board withdrew its Order to Show Cause upon completion of probation – thus imposing no punishment on the teaching staff member. (*Id.* at 10-13) Additionally, the appellant asserts that she had never previously been the subject of any disciplinary action and consistently received excellent evaluations and observations during her fifteen-year teaching career. (*Id.* at 8-9) Appellant further points out that Timothy McCorkell, Superintendent of Monmouth County Vocational School District, submitted a certification that praised the quality of appellant’s teaching and supported the continued employment of appellant within the District. (*Id.* at 14)

Moreover, the appellant argues that if she had been afforded a hearing before the Office of Administrative Law (OAL), she would have had the opportunity to present testimony as to the mitigating circumstances related to her arrest and mental health condition, as well as to the status of her probationary period. (*Id.* at 15-19) Therefore, the appellant maintains that the Board’s decision to suspend her certificates for three years should be reversed, or in the alternative, the Commissioner should remand the matter for a full hearing before the OAL. (*Id.* at 20)

In opposition, the Board maintains that the decision to suspend the appellant for three years was not arbitrary, capricious or unreasonable, and it should be affirmed by the Commissioner. (Board’s brief at 15-19) The Board stresses that its decision to suspend appellant’s teaching certificates for three years was grounded in competent evidence and warrants deference. (*Ibid.*) The Board further maintains that the appellant was afforded due process, as appellant’s underlying conduct was not in dispute, and she was given the opportunity

to present evidence as to her sanction both in writing and in person. (*Id.* at 9-15) Moreover, the Board contends that the appellant's appeal is untimely and should be dismissed.¹ (*Id.* at 8-9)

In reply, the appellant submitted new information indicating that after the Board issued its decision, her three year probationary period ended in July 2015 – approximately a year and a half early – and that her charges had since been dismissed. (Appellant's reply brief at 1-2) Appellant also explains that she was selected to represent the State of New Jersey at a program held by the National Council for Behavioral Health. (*Id.* at 2) Appellant asserts that this additional information should be considered in addition to the mitigating circumstances that were previously presented to the Board. (*Id.* at 3)

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious or unreasonable. *N.J.A.C.* 6A:4-4.1(a).

Initially, the record reflects that the appellant was afforded the necessary due process throughout the proceedings before the Board. Although the matter was not transmitted to the OAL,² the appellant was given an opportunity to submit a written brief for the Board's consideration and she also appeared before the Board to present evidence on mitigating circumstances in accordance with *N.J.S.A.* 52:14B-9(c).

¹ Following the Board's meeting on January 23, 2015, appellant became aware that her teaching certificates would be suspended for three years, and subsequently filed a motion for a stay and an appeal on February 12, 2015. *See N.J.A.C.* 6A:4-3.3. The Board's decision was issued and stayed on March 12, 2015. Although the appeal preceded the Board's March 12, 2015 written decision – rather than being filed within thirty days after issuance of the Board's decision pursuant to *N.J.A.C.* 6A:4-2.2 – the notice of appeal necessarily accompanied appellant's motion for a stay, which appellant sought to file prior to the implementation of the Board's decision. Considering the circumstances, a relaxation of the rules is warranted, and the Commissioner will consider the instant appeal. *See N.J.A.C.* 6A:4-4.4.

² The Board exercised its discretion under *N.J.A.C.* 6A:9B-4.7 and determined that it was not necessary to transmit the matter to the OAL because there were no material facts in dispute.

After full consideration of the record and all submissions, the Commissioner concurs with the Board that the appellant engaged in unbecoming conduct. It is undisputed that the appellant drove while intoxicated with her minor daughter in the car, hit a parked car, and was accepted into a Pretrial Intervention program after being charged with endangering the welfare of a child. The Board's determination in connection with the characterization of appellant's behavior as unbecoming conduct is fully supported by the record and consistent with applicable law. There is nothing in the record to suggest that the Board's decision was arbitrary, capricious or unreasonable, and as a result the Commissioner finds no basis upon which to disturb the decision Board's decision that appellant is guilty of unbecoming conduct.

With respect to the appropriate penalty, the Commissioner remands the matter to the Board for consideration of the additional information provided by appellant, specifically the early completion of appellant's probation. Such information is relevant to the Board's determination of the appropriate sanction, but was not available at the time of the Board's decision.

Accordingly, the decision of the State Board of Examiners is affirmed in part for the reasons expressed therein and remanded to the Board for the limited purpose of determining the appropriate penalty, as indicated herein.³

COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2015

Date of Mailing: November 2, 2015

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), and applicable Appellate Division rules.