

IN THE MATTER OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
OF MICHAEL J. MARTINO. : DECISION

SYNOPSIS

Appellant Michael J. Martino challenged the determination of the New Jersey State Board of Examiners (Board) that his criminal indictment – on charges of sexual assault, endangering the welfare of a child, and official misconduct involving a former student – warranted the suspension of his teaching and supervisory certificates, effective immediately, pending resolution of the criminal proceedings against him. On appeal, Martino maintained that the Board’s decision should be vacated, arguing, *inter alia*, that his due process rights were violated when the Board took summary action to suspend his teaching certificates during the pendency of his criminal case.

The Board maintained, *inter alia*, that the decision to suspend the appellant during the pendency of the criminal case against him was not arbitrary, capricious or contrary to law. Further, the Board contended that the appellant was afforded due process, as his underlying conduct was not in dispute, and appellant was given the opportunity to present evidence both in writing and in person. The Board argued that there was sufficient justification for appellant’s suspension, and urged the Commissioner to affirm same.

Upon review, the Commissioner – whose scope of review in matters involving decisions of the Board, including determinations to suspend teaching certificates, is appellate in nature – concurred with the Board that just cause exists for suspension of appellant’s certificates during the pendency of the criminal case against him. Accordingly, the decision of the Board was affirmed for the reasons expressed therein.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

November 3, 2017

STATE BOARD OF EXAMINERS DOCKET NO. 1516-133
AGENCY DOCKET NO. 2-6/17A

IN THE MATTER OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
OF MICHAEL J. MARTINO. : DECISION

Order of Suspension by the State Board of Examiners, May 12, 2017

For the Respondent-Appellant, Nicholas Poberezhsky, Esq.

For the Petitioner-Respondent State Board of Examiners, James M. Esposito,
Deputy Attorney General (Christopher S. Porrino, Attorney General of New Jersey)

Appellant challenges the determination of the New Jersey State Board of Examiners (Board) that his criminal indictment warranted the suspension of his Teacher of Mathematics Certificate of Eligibility with Advanced Standing, and his Teacher of Mathematics and Supervisor certificates – effective immediately – pending resolution of the criminal proceedings against him.

On appeal, Martino maintains that the Board’s decision to suspend his certificates should be vacated.¹ Appellant argues that the Board violated his due process rights when it took summary action to suspend his teaching certificates during the pendency of his criminal case. Furthermore, appellant argues that the Board acted without knowledge of the truthfulness of the charges filed, and therefore, has no legitimate basis upon which it can suspend his certificates. Finally, Martino notes that he has resigned from his teaching position and will not be performing any work related to his certificates until the criminal case is resolved; he argues that there is no practical benefit or public policy consideration that would justify the suspension, especially since

¹ Martino relies on his prior submissions to the Board in support of his appeal.

the Criminal History Review Unit would alert any prospective employer of appellant's indictment if he applied for a teaching position in the State.

In opposition, the Board maintains that the decision to suspend appellant pending the resolution of the criminal case against him was not arbitrary, capricious or contrary to law, and should be affirmed by the Commissioner. The Board submits that there was sufficient justification for the suspension and that it acted reasonably in suspending appellant's teaching certificates, based on applicable law and the public interest in protecting the safety of school children. The Board further maintains that the appellant was afforded due process, as appellant's underlying conduct was not in dispute, and he was given the opportunity to present evidence both in writing and in person.

The Commissioner's scope of review in matters involving decisions of the Board, including determinations to suspend teaching certificates, is appellate in nature. *N.J.A.C. 6A:4-4.1(a)*. In other words, absent a demonstration by appellant that the Board acted in an arbitrary, capricious or unreasonable manner, the Commissioner may not overturn the Board's decision.² *See id.*; *see also B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987); *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration." *Bayshore*, 122 *N.J. Super.* at 199-200. As such, the Commissioner may not substitute her own judgment for that of the Board where due process has been afforded and where exists sufficient credible evidence in the record to serve as a basis for the decision rendered by the Board.

² Arbitrary and capricious means "willful and unreasoning action, without consideration and in disregard of circumstances." *Bayshore Sew. Co. v. Dep't of Env't. Protection*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974).

As a preliminary matter, the record reflects that appellant was afforded the necessary due process throughout the proceedings before the Board: appellant was provided notice, and he was given an opportunity to submit evidence for the Board's consideration and to appear before the Board. *See N.J.S.A. 52:14B-9.* In fact, prior to the hearing, appellant notified the Board that he was waiving his right to appear before the Board and would rely on his previous written submissions.

Upon consideration of the record and all submissions, the Commissioner concurs with the Board – for the reasons set forth in the May 17, 2017 Order of Suspension – that just cause exists to suspend appellant's certificates during the pendency of the criminal case. It is undisputed that the appellant has been indicted on charges of Sexual Assault in the Second Degree, Endangering the Welfare of a Child in the Second Degree, and Official Misconduct in the Second Degree. The allegations related to these charges include appellant knowingly engaging in acts of sexual penetration with his student on numerous occasions while she was a minor. It is further undisputed that if appellant is found guilty of the charges, he will be disqualified from public employment. The record also reveals that Martino admittedly developed and maintained a relationship with his student that extended beyond a typical student-teacher relationship, which was inappropriate and unbecoming of a teaching staff member. Therefore, the Board's determination – in connection with the pending charges – is fully supported by the record, and consistent with applicable law and public policy. It is evident that the Board has considered the issues presently on appeal, and there is nothing in the record to suggest that the Board's decision was arbitrary, capricious or unreasonable; as such, the Commissioner finds no basis upon which to disturb the Board's decision to suspend appellant's teaching certificates for just cause pending resolution of the criminal matter.

Accordingly, the decision of the State Board of Examiners is affirmed for the reasons expressed therein.³

COMMISSIONER OF EDUCATION

Date of Decision: November 3, 2017

Date of Mailing: November 6, 2017

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.