

STATE BOARD OF EXAMINERS DKT. NO. 1415-223
AGENCY DKT NO. 1-2/18A

IN THE MATTER OF THE :
REVOCATION OF THE CERTIFICATES : COMMISSIONER OF EDUCATION
OF JENNIFER FILO, : DECISION
STATE BOARD OF EXAMINERS. :

Order of Revocation by the State Board of Examiners, December 8, 2017

For the Respondent-Appellant, Steven J. Kafowitz, Esq.

For the Petitioner-Respondent State Board of Examiners, Jennifer Hoff,
Deputy Attorney General (Gurbir S. Grewal, Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with Appellant Jennifer Filo's appeal of the State Board of Examiners' (Board) Order of December 8, 2017, revoking her Teacher of the Handicapped Certificate and her Teacher of Elementary School Certificate of Eligibility with Advanced Standing. This matter stems from tenure charges that were filed in 2014 against the appellant by the Morris-Union Jointure Commission in accordance with the Tenure Employees Hearing Law, *N.J.S.A.* 18A:6-10 to 18.1. On March 22, 2015, an Arbitrator found that the appellant engaged in a pattern of corporal punishment against her special education students during the 2013-2014 school year.¹ The Arbitrator also determined that the appellant's unbecoming conduct warranted her dismissal from the Morris-Union Jointure Commission.

Thereafter, the Board issued an Order to Show Cause, dated June 26, 2015, directing the appellant to show why her certificates should not be revoked. The Order to Show Cause incorporated the Arbitrator's decision and found that there was "just cause for

¹ Pursuant to *N.J.S.A.* 18A:6-16, all tenure matters that are filed with the Department of Education are referred to an independent arbitrator for further proceedings.

consideration of the revocation of appellant's certificates as a result of the proven allegations in the tenure proceeding." After the appellant filed an answer to the Order to Show Cause, the case was transmitted to the Office of Administrative Law (OAL). The Administrative Law Judge (ALJ) determined that the Board was entitled to summary decision because the facts proven before the Arbitrator demonstrate that the appellant engaged in conduct unbecoming a teacher. In so doing, the ALJ denied the appellant's request for an evidentiary hearing because the doctrine of collateral estoppel² precluded the re-litigation of facts proven during the tenure arbitration proceedings. Based on the nature and extent of appellant's unbecoming conduct, the ALJ recommended the revocation of the appellant's certificates. On December 8, 2017, the Board issued an Order adopting the Initial Decision and revoking the appellant's certificates.

On appeal, the appellant reiterated the arguments advanced before the ALJ and the Board, contending that it was not appropriate to apply the doctrine of collateral estoppel to her case so as to give the Arbitrator's award preclusive effect. The appellant maintains that collateral estoppel should not have been invoked because arbitrators are not bound by the rules of evidence that ensure fairness in a court setting and the grounds for an appeal of an arbitrator's decision is very narrow. The appellant also stresses that in this case, the Arbitrator's decision was palpably incorrect because it was based almost exclusively on the testimony of the school district's witnesses, which contradicted the credible testimony of the appellant and her witnesses. The appellant further argues that even if the Commissioner determines that collateral estoppel should apply, the totality of her teaching career should have been considered in determining the appropriate penalty. As a result, the appellant maintains that the Commissioner should reject the Board's decision revoking her certificates and either remand this matter to the OAL for a full

² Collateral estoppel is an equitable principle that bars re-litigation "when an issue of fact or law is actually litigated and determined by a valid and final judgment." *Winters v. North Hudson Reg'l Fire and Rescue*, 212 N.J. 67, 85 (2012) (citations omitted).

hearing or, in the alternative, impose a sanction on the appellant that is less than the revocation of her certificates.

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)*.

After full consideration of the record and the parties' submissions, the Commissioner finds that the record adequately supports the Board's determination that the appellant engaged in unbecoming conduct and that the revocation of the appellant's certificates was the appropriate penalty. Despite the appellant's contentions to the contrary, the Commissioner finds – for the reasons stated in the Initial Decision – that the ALJ appropriately invoked the doctrine of collateral estoppel denying the appellant's request for an evidentiary hearing at the OAL.³ There is no doubt that the license revocation proceeding is grounded in the same facts that gave rise to the tenure charges filed against the appellant. Moreover, the facts underlying the revocation proceeding were fully litigated in the binding arbitration process, during which the appellant had an opportunity to present witnesses and testify before the Arbitrator. Further, the Commissioner finds that there is no public policy concern or fairness issue that would dictate an exception to the application of the doctrine of collateral estoppel in this case.

The Commissioner also finds that the Board's decision to revoke the appellant's certificates is fully supported by the evidence in the record. The appellant's unbecoming conduct was not based on an isolated incident; rather, she engaged in a pattern of corporal

³ All of the arguments made by the appellant on appeal were previously considered and thoroughly addressed, both by the ALJ in the Initial Decision and by the Board in its Order of Revocation.

punishment against her special education students throughout the 2013-2014 school year. The egregious behavior included, among other things: twisting the wrists of several students; bending back students' fingers to punish or control behavior; smacking a student's knuckles with a wooden clipboard; and yelling at students and mimicking their autistic behaviors. There is nothing in the record to suggest that the Board's decision to revoke the appellant's certificates – which was based on the nature and extent of the unbecoming conduct proven during the tenure arbitration proceedings – was arbitrary, capricious or unreasonable. Therefore, the Commissioner finds no basis upon which to disturb the decision of the Board.

Accordingly the decision of the State Board of Examiners is affirmed for the reasons expressed therein. ⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 4, 2018

Date of Mailing: May 4, 2018

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*