

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of
the Certificates of James A. Smith
by the State Board of Examiners.

Order of Suspension by the State Board of Examiners, January 23, 2020

For the Respondent-Appellant, James W. Boyan, III, Esq.

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

Appellant challenges the determination of the New Jersey State Board of Examiners (Board) that his actions warranted the suspension of his Supervisor Certificate and Principal Certificate of Eligibility for four months.

In this matter, appellant was the Athletic Director at the Mountain Lakes School District (District). After a hearing before the Office of Administrative Law, the Board found that the appellant failed to complete his required coach and teacher evaluations and failed to report a parent's harassment, intimidation and bullying (HIB) complaint as required by the District's HIB policy. Concluding that this conduct amounted to inefficiency and unbecoming conduct, the Board suspended appellant's Supervisor Certificate and Principal Certificate of Eligibility for four months.¹ This appeal followed.

On appeal, the appellant argues that the Board's decision to suspend his

¹ Appellant's Teacher of Social Studies Certificate was not suspended.

certificates was contrary to law because the evidence did not satisfy the statutory requirements for a charge of inefficiency. Appellant points out that *N.J.S.A.* 18A:6-17.3 requires two annual summative evaluations – with ratings of ineffective or partially ineffective – to warrant a charge of inefficiency. Appellant maintains that he only had a summative evaluation in the 2016-17 school year, and one summative evaluation cannot support a charge of inefficiency.

Appellant also contends that the Board acted contrary to law when it suspended his certificates for unbecoming conduct because it relied on inadmissible evidence that should not have been considered. According to appellant, the finding that he failed to complete coach and teacher evaluations over a five-year period was based on hearsay that was not corroborated by a residuum of competent evidence, as required by *N.J.A.C.* 1:1-15.5. Appellant explains that the Board relied on a chart created by the Director of Curriculum that documented appellant's assigned observations for physical education teachers, but such a document is a hearsay statement that fails to fall within a hearsay exception.

Finally, appellant argues that his alleged conduct fails to rise to the level of egregious conduct required for a finding of conduct unbecoming. Appellant maintains that he did not show a disregard for his duties, even when he did not complete all evaluations. Appellant also contends that the Board fails to explain how his failure to report a complaint about the girls' basketball coach supports a charge of unbecoming conduct. Accordingly, appellant urges the Commissioner to reverse the findings of inefficiency and conduct unbecoming, as well as the four-month suspension of his supervisory certificates.

In opposition, the Board argues that it proved by a preponderance of the competent and credible evidence that appellant engaged in unbecoming conduct that warrants a four-month suspension of his supervisory certificates. According to the Board, the evidence demonstrates a pattern of behavior in not completing evaluations over a five-year period, as well as failing to follow state law and District policy by not reporting an HIB complaint. The Board further maintains that the chart documenting the appellant's assigned evaluations was properly

considered as it was supported by a residuum of competent evidence, specifically the testimony of the Superintendent as well as the Director of Curriculum. Additionally, the Board contends that it was within its authority to suspend appellant's supervisory certificates on the basis of inefficiency.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute her 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).

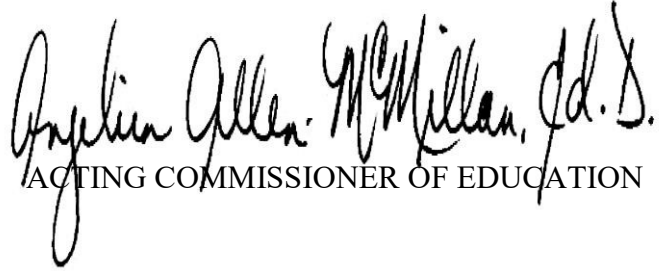
Initially, the record reflects that the appellant was afforded the necessary due process throughout the proceedings before the Board prior to the suspension of his supervisory certificates. The matter was transmitted to the Office of Administrative Law in accordance with *N.J.A.C.* 6A:9B-4.6(d), and appellant was afforded a hearing.

After full consideration of the record and all submissions, the Commissioner concurs with the Board that the appellant engaged in unbecoming conduct. The testimony and evidence demonstrate that appellant failed to complete coach and teacher evaluations over a fiveyear period, even after he was placed on a corrective action plan. Failing to complete such a fundamental responsibility over an extended time demonstrates a pattern of disregard for his duties. Additionally, the record demonstrates that appellant failed to follow State law and District policy when he did not report an HIB complaint raised by a parent. Such a failure to abide by this responsibility puts the District in violation of the statutorily-mandated timeframe by which it is required to investigate HIB matters, as outlined in the Anti-Bullying Bill of Rights Act at *N.J.S.A.* 18A:37-15. The Commissioner further finds that the record adequately supports the Board's determination that a four-month suspension of appellant's supervisory certificates was the appropriate penalty.²

The Commissioner does not find appellant's arguments on appeal to be

persuasive. The Board's decision did not violate the residuum rule set forth at *N.J.A.C.* 1:1-15.5. The Board's determination that appellant failed to complete evaluations was not solely based on a chart, but was instead supported by the testimony of both the Superintendent and Director of Curriculum. As such, the Board's determination was based on the sufficient, credible evidence in the record, and was not arbitrary, capricious, or contrary to law.

Accordingly, the decision of the State Board of Examiners is affirmed.³


ANGELINA ALLEN-McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 2, 2020

Date of Mailing: December 2, 2020

² As the Commissioner finds that appellant has engaged in unbecoming conduct which warrants a fourmonth suspension of his supervisory certificates, the Commissioner declines to reach the issue of inefficiency.

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