

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
SCOTT POWELL : ORDER OF REVOCATION
_____ : DOCKET NO: 0910-152

At its meeting of January 7, 2010, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Scott Powell from his tenured position with the Lopatcong School District (Lopatcong) for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Scott Powell*, Docket No. 347-12/05 (Commissioner's Decision, March 18, 2009). Powell currently holds a Teacher of the Handicapped certificate, issued in February 1977. At its meeting of March 25, 2010, the Board voted to issue Powell an Order to Show Cause as to why his certificate should not be revoked.

This case originated in November 2005 when Lopatcong certified tenure charges against Powell alleging unbecoming conduct and incapacity. Lopatcong alleged that Powell had acted inappropriately by asking students to give him back rubs or push on his back. Powell had also allegedly talked to students about his injuries, walked while holding on to his private area and yelled at students. The administration had warned Powell repeatedly not to touch students.

After receiving Powell's response to the tenure charges, the Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Caridad F. Rigo heard testimony on several days during October, November and December 2007 and January, April, May and June 2008. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on February 2, 2009. *In*

the Matter of the Tenure Hearing of Scott Powell, Dkt. Nos. EDU 1425-06, EDU 7630-06, EDU 7065-07, EDU 1519-08 and EDU 9521-08 (Consolidated) (Initial Decision, February 2, 2009).¹

In that decision, ALJ Rigo found that the students who testified were consistent and credible regarding the shoulder/back rubs they gave Powell or saw other students give Powell. *Id.* at 29-30. The ALJ found that the students “had no motive to lie” and had nothing to gain or lose by their testimony. *Id.* at 30. ALJ Rigo also ruled that Mr. Purdy, the elementary school principal and Superintendent who testified about concerns he had with Powell’s behavior as early as 1986, presented testimony that substantiated Powell’s pattern of behavior. *Ibid.* She also determined that Powell’s own testimony corroborated the students’ and Purdy’s accounts. *Id.* at 30-31.

ALJ Rigo stated that this case demonstrated Powell’s unfitness to teach through a series of incidents “beginning as early as 1986 and ending in June of 2005.” *Id.* at 31. She therefore found that “the charge of inappropriate physical behavior towards his students throughout the 2004-2005 (*sic*) and possibly prior to 2004 has been proven by a preponderance of the credible evidence.” *Id.* at 32. The ALJ found that Lopatcong had also proven Powell’s incapacity by a preponderance of the credible evidence. *Ibid.* In determining the appropriate penalty, ALJ Rigo noted that Powell had numerous complaints about his behaviors toward his students and testified himself regarding his conversations with Purdy regarding his inappropriate conduct and what corrective measures he could take. *Id.* at 33. Thus, based on her review of the entire record, the ALJ concluded that Powell should be dismissed from his tenured position. *Ibid.*

¹ Powell’s tenure case was consolidated with a number of cases he had filed challenging Lopatcong’s action in withholding his salary increments for several school years. Those issues were resolved in favor of Lopatcong in the tenure proceeding. Initial Decision, slip op. at 33-34.

In a decision dated March 18, 2009, the Commissioner of Education concurred with the ALJ's conclusion that Powell's actions constituted unbecoming conduct: "The Commissioner's considered review of the entire record before her provides no basis whatsoever for alteration of the ALJ's determinations." Commissioner's Decision, slip op. at 5. However, the Commissioner disagreed with the ALJ's conclusion that the Board had demonstrated incapacity and therefore dismissed that tenure charge. *Ibid.* In assessing the appropriate penalty, the Commissioner noted that although Powell had received many positive evaluations during his more than 25 years of teaching in Lopatcong, those factors were outweighed by the series of incidents where Powell "exhibited a pattern of poor impulse control, poor insight and poor judgment in his interactions with students under his charge." *Id.* at 6. The Commissioner stated that Powell's "unacceptable pattern of misconduct" provided little promise that in the future he would "achieve comportment to the standard which is reasonably demanded of a teaching staff member in this regard, specifically self-restraint, prudence and controlled behavior in his interactions with students." *Id.* at 6-7. Accordingly, the Commissioner sustained the tenure charge of unbecoming conduct and affirmed Powell's removal from his tenured employment. *Id.* at 7. The Commissioner transmitted the matter to the State Board of Examiners for appropriate action regarding Powell's certificate. *Ibid.*

Thereafter, on March 25, 2009, the State Board of Examiners issued Powell an Order to Show Cause as to why his certificate should not be revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Powell the Order to Show Cause by regular and certified mail on April 8, 2010. The Order provided that Powell's Answer was due within 30 days. Powell responded on April 22, 2010. In that response, Powell admitted that Lopatcong had brought tenure charges

against him and that he had been removed from his tenured position by the Commissioner. (Answer, ¶¶ 3-5.) He added that there was no basis to revoke or suspend his certificate. (Answer, ¶ 7.)

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on May 4, 2010, the Board sent Powell a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Powell was offered an opportunity 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 that the Board determined to take action against his certificate. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the State Board of Examiners would determine if the charges proven in the tenure matter warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Powell was also provided the opportunity to appear before the Board to testify on the sanction issue. Neither the certified mail copy nor the regular mail copy was returned. No response was filed.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Powell's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of July 22, 2010, the State Board of Examiners considered the Order to Show Cause and Powell's response. The Board of Examiners determined that no material facts related to Powell's offense were in dispute since he admitted that he had lost his tenured position as a result of the tenure proceedings brought against him. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-*

17.7(h). It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The State Board of Examiners must now determine whether Powell's conduct as set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C. 6A:9-17.5*. "Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons, 1972 S.L.D. 302, 321*. There can be no dispute that Powell's ongoing conduct in having students give him back and shoulder rubs, talking to students about his injuries and accidents, holding on to his private area while walking and yelling at students amply demonstrates his inability to be a role model for students. His continued inappropriate behavior in the face of numerous reprimands speaks volumes about his unfitness to be a teacher. The Examiners therefore conclude that the only appropriate response to Powell's breach is the revocation of his teaching certificate.

Accordingly, on July 22, 2010, the Board of Examiners voted to revoke Scott Powell's Teacher of the Handicapped certificate. On this 16th day of September 2010 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Powell's certificate be effective immediately. It is further ORDERED that Powell return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing: , 2010

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.