

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
WESLEY GILMER : ORDER OF REVOCATION
_____ : DOCKET NO: 1112-130

At its meeting of November 1, 2011, the State Board of Examiners (Board) reviewed a decision forwarded by the Acting Commissioner of Education that had dismissed Wesley Gilmer from his tenured position with the State-Operated School District of the City of Newark (Newark) for charges of inefficiency. *Gilmer v. State-Operated School District of the City of Newark, and In the Matter of the Tenure Hearing of Wesley Gilmer*, Docket Nos. 317-10/08 and 296-10/09 (Consolidated) (Acting Commissioner’s Decision, July 29, 2011). Gilmer currently holds a Teacher of Elementary School certificate, issued in March 1997.

This case originated on November 6, 2009, when Newark certified tenure charges of inefficiency against Gilmer. The case was transmitted to the Office of Administrative Law (OAL) on November 30, 2009. On January 8, 2010, the tenure matter was consolidated with Gilmer’s pending challenge to an increment withholding, which arose out of the same facts.¹ Newark’s tenure charges alleged that Gilmer had failed consistently to adhere to school submission timelines for lesson plans and writing tasks, had unsatisfactory attendance, failed to timely submit samples of student work, and failed to keep bulletin boards up to date with student work. Newark also alleged that, despite being provided a ninety day improvement plan as required by *N.J.S.A. 18A:6-11*, Gilmer did not remedy his shortcomings.

Administrative Law Judge (ALJ) Ellen Bass heard testimony commencing on March 9, 2010 and continuing for 22 additional days. After receiving post-hearing submissions, the record closed on March 28, 2011 and the ALJ issued an Initial Decision on May 6, 2011. *Gilmer v. State-Operated School District of the City of Newark and In the Matter of the Tenure Hearing of*

¹ That aspect of the case, which is not before the Board, will not be discussed in this decision.

Wesley Gilmer, Dkt Nos. EDU 13895-08 and EDU 13560-09 (Consolidated) (Initial Decision May 6, 2011).

In that decision, ALJ Bass found that Gilmer was hired by Newark in November 1997. (Initial Decision, slip op. at 5). She noted that his evaluations during his first few years in Newark ranged from satisfactory to outstanding. *Id.* at 5-6. ALJ Bass noted that, beginning in December 2002, Gilmer's evaluations "began to reflect shortcomings in [his] performance, with several areas rated as needing improvement." *Id.* at 6. Gilmer was transferred to a different school, Quitman, for the 2004-2005 school year. *Id.* at 7. From the beginning of his time at Quitman, Gilmer's evaluations indicated his deficiency in maintaining student records and submitting documents in a timely fashion. *Id.* at 8-10. Gilmer testified that his difficulties with the principal at Quitman stemmed from his taking her designated parking spot and refusing to move his car, but ALJ Bass determined that Gilmer lacked credibility on this issue. *Id.* at 11-13. In fact, the ALJ found that "the administrative evaluations and reprimands that came during the 2005-2006 school year, and thereafter, were not part of a scheme to retaliate for Gilmer's refusal to move his car, but rather, were efforts by administration to document performance shortcomings that dated back to Gilmer's assignment [at his previous school]." *Id.* at 13. Gilmer's evaluations continued to deteriorate and in 2006 he was cited for failing to submit his management book on a monthly basis as well as writing samples, lesson plans and newsletters. *Id.* at 14. He was also cited for failing to use differentiated instruction and failing to create an environment of respect and rapport. *Id.* at 15. Gilmer was transferred to a first grade position effective September 2006 but, as the ALJ noted, he continued to be unable to meet his paperwork obligations in a timely manner. *Id.* at 15-17. Gilmer also was rated unsatisfactory for various reasons including failing to update bulletin boards; failing to display student work in the classroom; failing to pick up students in a timely manner after lunch; and failing to use

differentiated instruction. *Id.* at 18. Gilmer's evaluations for 2007-2008 were also negative and contained many of the same negative assessments. *Id.* at 19-20. By June 2008 the Administration developed a Personal Improvement Plan for Gilmer; he refused to meet to discuss it. *Id.* at 22. Newark withheld Gilmer's salary increment at the close of the 2007-2008 school year and by January 2009 had issued tenure charges of inefficiency against him. *Id.* at 22-23. Gilmer received a ninety-day PIP, but he declined to discuss it with his principal. *Id.* at 24. The plan was extended to June 26, 2009 due to Gilmer's illness in May. *Ibid.* ALJ Bass found that Gilmer was offered varied support during his PIP period and found his testimony to the contrary not credible. *Id.* at 26.

At the conclusion of the testimony, ALJ Bass determined that classroom observations of Gilmer had revealed the following shortcomings in Gilmer's instructional technique and classroom management, shortcomings which were not remedied during his ninety-day improvement period: failure to demonstrate knowledge and content of pedagogy; failure to differentiate instruction; failure to properly prepare lesson plans; failure to assess learning; failure to manage classroom procedures; failure to engage students, and create a culture for learning; failure to use flexible and responsive teaching techniques to reach students; failure to use appropriate questioning techniques; failure to maintain and submit records properly, including lesson plans; failure to grow and develop professionally; failure to create an appropriate learning environment in his classroom; failure to properly order the physical space in his classroom; failure to comply with District policies, such as the requirement that a management book be maintained; and, failure to reflect on teaching by implementing suggestions for improvement. *Id.* at 29. The ALJ also found that Gilmer failed to contribute to the school and to the District and had, on several occasions, had poor attendance. *Id.* at 29-30. The ALJ therefore concluded that "the District has proven its charges of inefficiency against

Gilmer. *Id.* at 31-32. Based upon her findings that Newark had provided Gilmer with years of support and encouragement in an effort to help him improve even before the inefficiency charges were served, ALJ Bass ordered that “Gilmer should be dismissed from his tenured position of employment.” *Id.* at 36.

In a decision dated July 29, 2011, the Acting Commissioner of Education (Commissioner) affirmed the ALJ’s Initial Decision in its entirety. He noted that “the common theme advanced by [Gilmer] consisted of a litany of excuses as to why the District was not doing enough to make him a better teacher, despite the fact that the evidence showed that the District provided the respondent with the requisite support and assistance during the Improvement Period, and even well before it was implemented.” (Acting Commissioner’s Decision, slip op. at 5). The Commissioner therefore determined that “the extensive record illustrates that [Gilmer] is unfit to remain in his position.” (Acting Commissioner’s Decision, slip op. at 5). Accordingly, the Commissioner ordered Gilmer’s removal from his tenured employment with Newark and transmitted the matter to the Board for appropriate action regarding Gilmer’s certificate. (Acting Commissioner’s Decision, slip op. at 5).

Thereafter, on December 16, 2011, the Board issued Gilmer an Order to Show Cause as to why his certificate should not be revoked. The Order was predicated on the charges of inefficiency that had been proven in the tenure hearing.

The Board sent Gilmer the Order to Show Cause by regular and certified mail on December 22, 2011. The Order provided that Gilmer’s Answer was due within 30 days. Gilmer filed an Answer on January 27, 2012. In his Answer, Gilmer did not deny that he had made some “egregious mistakes in performance judgment” but added that he was an effective teacher. (Answer, p. 1). He noted that he had “a clear record of students achieving significant academic gains” and believed that he could still be an effective teacher. (Answer, pp. 1-2). Gilmer also

emphasized the successes he had had in his career and discussed the long hours he worked, including during school breaks. (Answer, p. 2). Gilmer reiterated his commitment to teaching and spoke of the positive impact he had had on his students. (Answer, pp. 3-4). He claimed that his “overall inefficiency assessment was the result of the District’s failure to provide appropriate support for me when I was abruptly transferred to a first grade setting for the very first time in my teaching career.” (Answer, p. 4). Gilmer questioned why after demonstrating proficiency for 14 years from 1997 through 2005, he was suddenly deemed no longer proficient. (Answer, p. 4). In the remainder of his Answer, Gilmer noted that his “unsatisfactory” ratings were due to a personal vendetta and hostile work environment created by the principal of his school and included deficiencies that the Department of Education had assessed in his school’s practices. (Answer, pp. 6-7). Gilmer added that teaching was “a dream come true” for him and that given an additional opportunity he would “not miss the mark again.” (Answer, pp. 7-8).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on February 6, 2012, the Board sent Gilmer a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Gilmer 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 Board would determine if Gilmer’s offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Gilmer was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Neither the certified mail copy nor the regular mail copy was returned. Gilmer did not file a response.

The threshold issue before the Board in this matter, therefore, is whether Gilmer's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 17, 2012, the Board considered the allegations in the Order to Show Cause as well as Gilmer's Answer. The Board determined that no material facts related to Gilmer's offense were in dispute since he merely attempted to relitigate the facts that had previously been established by the Commissioner. Moreover, he did not deny that he had lost his tenured position as a result of the tenure proceedings brought against him. Thus, the Board 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 Board must now determine whether Gilmer'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 Board 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. The Board is bound, as was the Commissioner, with the credibility findings established by the ALJ. As the ALJ noted and the Commissioner agreed, Gilmer's inefficiencies were not an aberration, nor the result of novice teaching. Rather, Gilmer was either unable or unwilling to accept the help and support that Newark continually offered him, even long before tenure charges were filed. For Gilmer to suggest that he bore only minor responsibility in his myriad failures to serve his students effectively is disingenuous, at best.

Although he had an effective teaching career for many years prior to the record established here, Gilmer's recalcitrance in seeking help or accepting it when offered for the past several years suggests that he was no longer suitable for the classroom. There can be no dispute that Gilmer's conduct, in its totality, amply demonstrates his unfitness to continue to be a teacher. The Board therefore concludes that the only appropriate response to Gilmer's inefficiency is the revocation of his teaching certificate.

Accordingly, on May 17, 2012, the Board voted to revoke Wesley Gilmer's Teacher of Elementary School certificate. On this 30th day of November 2012 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Gilmer's certificate be effective immediately. It is further ORDERED that Gilmer return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Newark, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing:

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