

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
KEVIN HARRIMAN : ORDER OF REVOCATION
_____ : DOCKET NO: 1415-149

At its meeting of January 23, 2015, the State Board of Examiners (Board) reviewed a decision forwarded by the Commissioner of Education (Commissioner) that had dismissed Kevin Harriman from his tenured position as a health and physical education teacher with the Elmwood Park School District (Elmwood Park). *In the Matter of the Tenure Hearing of Kevin Harriman*, Docket No. 50-3/12 (Commissioner's Decision, October 12, 2012). Harriman currently holds a Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, issued in July 1999, a Teacher of Health and Physical Education certificate, issued in September 2000 and a Teacher of Driver Education certificate, issued in May 2002.

This case originated when Elmwood Park certified tenure charges against Harriman alleging unbecoming conduct. Elmwood Park alleged that Harriman: was guilty of deceptive and untruthful conduct; guilty of conduct that was inappropriate, defiant and insubordinate; failed to follow specific administrative directives; failed to enroll in anger-management courses and disregarded corrective actions. The district also alleged that Harriman treated his supervisors in a contumacious, discourteous and overtly disrespectful and personally demeaning manner.

Specifically, Elmwood Park alleged that Harriman forwarded to the district's athletic director a negative addendum to the evaluation of an assistant wrestling coach and falsely stated to the athletic director that the high school principal recommended that Harriman do so. On one occasion, Harriman also denied that he had left his class unattended even though the principal who spoke to him about the incident had directly observed it. Harriman also was seen injecting himself with insulin in a cafeteria filled with children, even though he had been given prior directives not to do so. When confronted about his actions, Harriman falsely contended that he was giving himself an emergency dose of glucose.

Harriman also allegedly defied his supervisor when he selected as most valuable player a student who had spewed profanity at a teacher. Harriman was also allegedly argumentative and unprofessional in telephone calls with New Jersey State Interscholastic Athletic Association (NJSIAA) personnel regarding the seeding and the ranking of the district's wrestling team, an action which jeopardized the district's standing in the NJSIAA. Harriman initially refused to attend an NJSIAA compliance meeting when directed to do so. He also defied an administrative directive to coaches to distribute athletic awards at a unified high school athlete dinner and instead, recognized his wrestlers at a municipal event.

Harriman was also accused of defying instructions or directives given to him by supervisors. In June 2011, Harriman failed to comply with two directives his principal, Allison Jackter, issued, ordering Harriman to meet with her. Instead, Harriman sent her a memo indicating that he would communicate with her via whiteboard only. In another instance, when Superintendent Richard Tomko placed Harriman on a 90-day action plan, before the plan had run its course, Harriman sent Tomko an email indicating that henceforth Harriman would not meet alone with Tomko or several other administrators. Harriman also sent Tomko a second memo indicating that he considered the action plan invalid.

In his Decision dated October 12, 2012, the Commissioner concurred with the Administrative Law Judge's (ALJ) conclusion that Elmwood Park had proven that Harriman was guilty of deceptive conduct, insubordinate behavior and hostile, contemptuous and abusive behavior. Commissioner's Decision, slip op. at 1. The Commissioner found, as did the ALJ, that the record supported a finding that Harriman was dishonest in the incidents involving the negative evaluation of the assistant wrestling coach, his leaving his classroom unattended and his false contention that he had injected himself with an emergency dose of glucose in the cafeteria. *Id.* at 1. The Commissioner also concurred with the ALJ's findings that Harriman had been insubordinate on many occasions, stemming from his responsibilities as a wrestling coach, as well as the incident where he had injected himself with insulin in the cafeteria after being directed to refrain from doing so. *Id.* at 2-3. As to the charges of Harriman's contemptuous behavior, the Commissioner found Harriman's "rebuttal" to the written directives of his supervisors to be particularly egregious as they were "defensive, accusatory, demeaning and often threatened legal action." *Id.* at 4. The Commissioner found that the rebuttal memos singularly demonstrated Harriman's

“undisguised disdain for his supervisors, his failure to appreciate their responsibilities and authority, his defiance of their directives and his failure to understand his obligation to cooperate with them for the smooth operation of the school.” *Id.* at 4-5. The Commissioner also agreed with the ALJ that Harriman’s conduct warranted his dismissal from his tenured employment. *Id.* at 5. Harriman was dismissed from his tenured employment with Elmwood Park as a result of the unbecoming conduct proven in the tenure proceeding and the Commissioner transmitted the matter to the Board for its review. *Ibid.* Harriman appealed from the Commissioner’s decision to the Appellate Division of the New Jersey Superior Court. *In the Matter of the Tenure Hearing of Kevin Harriman*, Dkt. No. A-1386-12T3 (App. Div. March 12, 2014) (Unpublished opinion). In its decision, the court found that there was “sufficient, credible evidence to support the Commissioner’s determination,” and therefore affirmed the decision “substantially for the reasons stated” by the ALJ and the Commissioner in their respective decisions. *Id.* at 19. The Court noted that 25 of the 32 counts brought against Harriman wherein he “either violated school policy, defied administrative directives, demeaned, disrespected and threatened his supervisors, were all substantiated through credible testimony and documentary evidence.” *Id.* at 21-22. The Court found that Harriman’s battle with the administration “not only impaired his ability to instruct his students, but it also diverted the administrators from their important responsibility as supervisors.” *Id.* at 22. Harriman’s dismissal from his tenured position was therefore upheld. *Ibid.*

Thereafter, on March 12, 2015, the Board issued Harriman an Order to Show Cause as to why his certificates 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 Harriman the Order to Show Cause by regular and certified mail on March 17, 2015. The Order provided that Harriman’s Answer was due within 30 days. Harriman filed his Answer on April 9, 2015.

In that Answer, Harriman recounted his interactions with his superiors and stated that the superintendent orchestrated a campaign of continued harassment, intimidation and bullying against him because Harriman had refused to change grades on two occasions. (Answer, ¶1). He added that the Superintendent enlisted two of the three elementary school principals Harriman served under to assist in

this “set up.” (Answer, ¶¶ 1, 2). Both principals were novices in that position. (Answer, ¶ 3). Harriman claimed that the Superintendent had alienated “hundreds of teachers, staff, administrators and coaches since he came to the district in 2002.” (Answer, ¶ 1). Harriman denied the allegations in the Order to Show Cause as to his behavior and noted that he “NEVER defied instructions or directives from my superiors ever.” (Answer, ¶¶ 2-7, ¶ 2). He also claimed that the “deceptive conduct, insubordinate behavior, hostile, contemptuous, and abusive behavior” were all adjectives that described how he was treated by the school administrators. (Answer, ¶ 7). Finally, Harriman argued that the ALJ and Commissioner’s decisions to remove his tenure were unjustified and lacked merit and “was all based on lies and exaggerated storylines that the ALJ could not comprehend.” (Answer, ¶ 8).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.7(e)*, on May 4, 2015, the Board sent Harriman a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Harriman was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against his certificates as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Harriman’s offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Harriman was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Harriman filed a written response on July 1, 2015. Harriman did not ask to appear before the Board.

In his Hearing Response, Harriman acknowledged that there was great friction between him and the Superintendent and two principals. (Hearing Response, p. 3). He noted however, that “having been written up over and over during a period of 7 school months, it is reasonable to assume” that he felt “frustrated, harassed, intimidated and bullied by the ‘write-up’.” (Hearing Response, p. 3). Harriman argued that it was those feelings that caused his rebuttals to be “defensive and sarcastic” and that it was unfair to punish an employee who rebuts allegations against him. (Hearing Response, p. 3). Harriman also noted that he had suffered greatly as a result of the tenure decision: he lost his home, health and

mental benefits, savings and his reputation. (Hearing Response, p. 4). He was also forced to cash out his teacher's pension. (Hearing Response, p. 4). He argued that "the loss of [my] teaching license would cause a fatal blow to a career to which [I have] devoted [my] entire adult life." (Hearing Response, p. 4). Harriman further claimed that his actions did not affect his students or his teaching relationships. (Hearing Response, p. 9). He also noted that he was being treated for depression and taking medication for anxiety and while that did not excuse his behavior, it "certainly offers at least a partial explanation" for his problems at work. (Hearing Response, p. 9). He therefore argued that the Board should take his psychological state into account as a mitigating factor in the case. (Hearing Response, p. 9). Harriman also claimed that the district went back to alleged behavior in 2003 and 2006 and then, after a period of five years with no incident, "suddenly an onslaught of alleged improprieties" were discovered. (Hearing Response, p. 9). He argued that these improprieties were minor in nature and not of such significance to warrant action against his certificates. (Hearing Response, p. 9). Accordingly, Harriman requested that the Board take no further action against him. (Hearing Response, p. 10).

The threshold issue before the Board in this matter, therefore, is whether Harriman's conduct constitutes conduct unbecoming a certificate holder. At its meeting of October 30, 2015, the Board considered the allegations in the Order to Show Cause as well as Harriman's Answer and Hearing Response. The Board determined that collateral estoppel applied as to the facts found in the tenure hearing and therefore no material facts related to Harriman's offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17, 2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings). Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.7(h)*.

The Board must now determine whether Harriman's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.5*. 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:9B-*

4.5. As the ALJ noted and the Commissioner and Appellate Division agreed, Elmwood Park sustained its charges of unbecoming conduct against Harriman. The record was replete with instances which demonstrate that Harriman's insubordinate and contemptuous conduct toward his administration was not an aberration and did not change despite repeated warnings. There can be no dispute that Harriman's conduct, in its totality, amply demonstrated his unfitness to continue in his tenured position. Furthermore, it is well settled that unfitness to teach may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. Of Educ.*, 130 N.J.L. 369, 371 (Sup. Ct. 1943), *aff'd* 131 N.J.L. 326 (E&A 1944). Here, where there were many instances of actionable behavior, the Board therefore determines that the appropriate response to Harriman's unbecoming conduct is the revocation of his certificates.

Accordingly, on October 30, 2015, the Board voted to revoke Kevin Harriman's Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing and his Teacher of Health and Physical Education and Teacher of Driver Education certificates. On this 10th day of December 2015 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Harriman's certificates be effective immediately. It is further ORDERED that Harriman return his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, 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

RRH/MZ/th
Date of Mailing:

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