At its meeting of April 5, 2012, the State Board of Examiners (Board) reviewed information it had received from the Point Pleasant Borough School District (PPBSD) pursuant to N.J.A.C. 6A:9-17.4 regarding Andrea Giuffrida. PPBSD dismissed Giuffrida from her non-tenured position as the result of allegations that she had acted inappropriately toward several of her male colleagues. Specifically, PPBSD alleged that at a Child Study Team meeting, Giuffrida placed her hands on colleague James Foley’s face and kissed him on the lips in front of other staff members. In another incident, Giuffrida allegedly told her male colleague, David Drew, that she was having a “rough day,” gave him a hug and kissed him on the cheek. Drew also reported that Giuffrida would stop to see him during cafeteria duty and make inappropriate comments about her physical appearance, including that “she was not that bad looking for a 40 year old woman going through menopause and that her breasts were okay, right?” Another staff member, Patrick Brady, alleged that when he was showing an office secretary a picture of his new baby, Giuffrida passed behind him and pinched/grabbed his buttocks.

Giuffrida currently holds a Teacher of Elementary School Certificate of Eligibility With Advanced Standing, issued in March 1994, a Teacher of Students With Disabilities certificate, issued in January 2005 and a Learning Disabilities Teacher-Consultant certificate, issued in October 2006. After reviewing the above information, at its May 17, 2012 meeting, the Board voted to issue an Order to Show Cause to Giuffrida as to why her certificates should not be revoked.

The Board sent Giuffrida the Order to Show Cause by regular and certified mail on May 24, 2012. The Order provided that Giuffrida must file an Answer within 30 days. Giuffrida responded on June 8, 2012. In her Answer, Giuffrida denied that she had kissed a colleague on the lips but did admit that, on one occasion, she touched a colleague lightly on the face and kissed his cheek “in an attempt to

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1 N.J.A.C. 6A:9-17.4 was later recodified as N.J.A.C. 6A:9B-4.4.
calm down from a difficult situation between herself and the coworker.” (Answer, ¶ 4). She also denied making comments about her physical appearance to a coworker. (Answer, ¶ 5). Giuffrida admitted she told a colleague she was having a rough day and gave him a hug, but she denied kissing him on the cheek. (Answer, ¶ 6). She also denied pinching or grabbing the buttocks of another coworker and denied that she had acted inappropriately toward her male colleagues. (Answer, ¶¶ 7, 8). Giuffrida maintained that certain allegations were untrue and that others involved “friendly gestures to coworkers that have been misrepresented….” (Answer, ¶ 8). In Separate Defenses, Giuffrida asserted that the allegations against her were untrue and should be dismissed; that the allegations which were true did not constitute conduct that warranted the revocation of her certificates; and that she was entitled to a hearing before the Office of Administrative Law. (Separate Defenses, ¶¶ 1-3).

Since there were material facts in dispute, the Board transmitted the matter to the Office of Administrative Law (OAL) on June 15, 2012 for hearing as a contested case. Administrative Law Judge (ALJ) John Schuster heard the matter on April 15, 2013 and February 18, 2014. The record closed on July 17, 2014. However, since ALJ Shuster retired prior to issuing a decision in the case, the matter was transferred to ALJ Lisa James-Beavers in April 2017. She issued an Initial Decision on October 13, 2017. *In the Matter of the Certificates of Andrea Giuffrida*, Dkt. No. EDE 8458-12 (Initial Decision, October 13, 2017).

After reviewing the testimony and the record, ALJ James-Beavers found that Giuffrida did grab Brady’s rear end as he stood showing a picture of his newborn daughter to a secretary in the office. (Initial Decision, slip op. at 16.) The ALJ determined that “Brady’s testimony was very credible in describing what he recognized as a distinct grab” and concluded that, compared to Giuffrida, who denied the incident, he was “certainly the more believable of the two.” *Ibid.* Similarly, ALJ James-Beavers found that Drew was a credible witness regarding the comment Giuffrida made to him about her breasts. *Ibid.* The ALJ also determined that Giuffrida had hugged Drew and kissed him on the cheek and that her actions “made him feel uncomfortable and shocked.” *Ibid.* As to the incident with Foley, although Giuffrida admitted to kissing him at a meeting, she denied kissing him on the lips and claimed it was a
kiss on the cheek. *Id.* at 17. ALJ James-Beavers maintained that Giuffrida lacked credibility “when considering the totality of the evidence against her,” and found that she did kiss Foley on the lips in the presence of other staff members. *Ibid.* The ALJ also noted that the kiss was unwanted, Foley was embarrassed and shocked by it and he told Giuffrida her actions were inappropriate and asked that she never do it again. *Ibid.* ALJ James-Beavers therefore concluded that the Board had proved “by a preponderance of the credible evidence in the record that Ms. Giuffrida’s actions were inappropriate and unwelcome and constituted conduct unbecoming a teacher/administrator.” *Id.* at 19.

In assessing the appropriate penalty however, the ALJ further determined that “Giuffrida’s conduct does not merit revocation of her certificates” since it did not involve students or take place in front of students and Giuffrida did not have the opportunity to show a change in behavior based on a warning or reprimand prior to being fired. *Id.* at 21. Instead, ALJ James-Beavers concluded that since Giuffrida had committed some form of sexual harassment, a one year suspension of her certificates was “appropriate to address the seriousness of her offenses.” *Ibid.* The ALJ also noted that because Giuffrida was disciplined for “similar, albeit not the same and fairly long ago, conduct,” she must get “counseling on sexual harassment and professionalism in the workplace to help her understand boundaries that she does not seem to recognize.” *Ibid.* Giuffrida filed Exceptions in the case and the Deputy Attorney General (DAG) representing the Board filed Exceptions and Reply Exceptions.

In her Exceptions, Giuffrida noted that the events complained of occurred in 2011 and a decision was not rendered in the matter until 2017, over six years later. (Exceptions, p. 1). She also emphasized that both attorneys “had nothing to do with the presentation of this matter” and that the ALJ “was confronted with a record that was not created before her,” thereby rendering the issues “incredibly stale.” (Exceptions, p. 2). Giuffrida argued that this case proved the maxim “justice delayed is justice denied.” (Exceptions, p. 2). She maintained that while it was understandable that an ALJ might not be able to render an Initial Decision within 45 days of the close of a hearing as required by *N.J.A.C.* 1:1-18.1(c), “a delay of over three years is a far cry from extending the initial 45 days for one or two additional 45-day periods.” (Exceptions, pp. 2-3). Giuffrida maintained that suspending her certificate for a year, six years
after the conduct was both “inappropriate and totally ineffective.” (Exceptions, p. 3). She noted that she had been successfully employed since leaving PPBSD and had no issues at her subsequent places of employment proving that she had “already learned from any past mistakes.” (Exceptions, p. 3). Giuffrida argued that “a suspension for a year at this much-delayed point in time, six years after the events complained of, serves no meaningful purpose, is totally punitive, is in no way remedial and would deprive [her current school district] of a valued member of its staff for reasons unrelated to her employment [there].” (Exceptions, p. 3). She therefore argued that the charges against her should be dismissed in their entirety or, at a minimum, the penalty should be reduced to a written warning. (Exceptions, pp. 3-4).

In her Exceptions, the DAG argued that the Initial Decision should be modified and a penalty of revocation should be imposed instead. (DAG Exceptions, pp. 1-2). The DAG noted that the Board did not seek to disturb the findings of fact in the decision but argued that the ALJ’s fact findings called for the revocation of Giuffrida’s certificates since Giuffrida “repeatedly engaged in unwelcome physical contact with colleagues” and her conduct should be considered “sufficiently disruptive to the ‘proper administration of the school system’ to warrant revocation.” (DAG Exceptions, pp. 7-9). The DAG posited that each individual incident where Giuffrida touched a colleague and made them uncomfortable in their working environment was “egregious and unacceptable” and, taken together, they “amount[ed] to a case for revocation.” (DAG Exceptions, p. 9).

The DAG further argued that the Board had no authority to order sexual harassment counseling and therefore, that portion of the Initial Decision should be modified. (DAG Exceptions, pp. 11-12). She also noted that Giuffrida had attended training provided by the district and had previously lost a month of salary for similar conduct and yet had failed to learn from those experiences. (DAG Exceptions, pp. 11-12).

In response to the Exceptions, the DAG claimed that Giuffrida had suffered no deprivation or prejudice due to the delay in the rendering of a decision that should warrant the drastic remedy of completely reversing any penalty for her unbecoming conduct. (DAG Exceptions, pp. 12-17). In fact, the
DAG argued that Giuffrida had benefitted from the delay by “not having a decision rendered against her certificates.” (DAG Exceptions, p. 12). The DAG noted that Giuffrida had “not argued any delay in the hearing resulting in prejudice” and stated that there had been no prejudice whatsoever since Giuffrida had been working since the time of the incident without her teaching certificate being affected. (DAG Exceptions, pp. 16-17). Thus, the DAG concluded that the passage of time had not hurt Giuffrida as there had been no loss or deprivation and urged the Board to revoke her certificates in light of her egregious and unbecoming behavior. (DAG Exceptions, p. 17).

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of January 19, 2018, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision and the other submissions, the Board voted to adopt the Initial Decision with modification as to penalty.

“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 is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, after assessing the evidence and the credibility of the witnesses, ALJ James-Beavers concluded that the Board had demonstrated that Giuffrida had engaged in inappropriate behavior but that such behavior did not warrant revocation. (Initial Decision, slip op. at 51). After reviewing the entire record, the Board agrees with the ALJ’s assessment regarding Giuffrida’s conduct but rejects the notion that revocation is not warranted.

Giuffrida systematically engaged in behavior that violated all norms of acceptable conduct in a workplace environment. Moreover, her actions embarrassed and discomfited her colleagues. Her arguments that any penalty is unnecessary because she’s “learned her lesson” or inappropriate because of the lengthy passage of time are misplaced. The Board’s focus is and should be on Giuffrida’s conduct at the time it happened and its impact upon those around her. The passage of time is mere happenstance and does not serve as a mitigating factor in this matter. As the DAG correctly noted in her Reply Exceptions,
Giuffrida has benefitted from that insofar as she has been able to continue using her certificates unencumbered but it does not lessen the egregiousness of her conduct. The Board therefore believes that the appropriate penalty in this matter is the revocation of her certificates.²

Accordingly, on January 19, 2018, the Board voted to adopt the Initial Decision with modification as to penalty and ordered the revocation of Giuffrida’s certificates. On this 13th day of April 2018, the Board formally adopted its written decision to adopt, with modification as to penalty, the Initial Decision in this matter, and it is therefore ORDERED that Andrea Giuffrida’s Teacher of Elementary School Certificate of Eligibility With Advanced Standing, and her Teacher of Students With Disabilities and Learning Disabilities Teacher-Consultant certificates are hereby revoked, effective immediately. It is further ORDERED that Giuffrida return her 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:
via certified and regular mail

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

² Although the Board does not have jurisdiction to order Sexual Harassment training as recommended by the ALJ, in light of the Board’s decision to revoke Giuffrida’s certificates, that aspect of the Initial Decision is now moot and need not be addressed here.