

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
JAMES A. SMITH : ORDER OF SUSPENSION
_____ : DOCKET NO: 1718-215

At its meeting of April 13, 2018, the State Board of Examiners (Board) reviewed information it received regarding James A. Smith. The Mountain Lakes School District (Mountain Lakes) provided information to the State Board of Examiners (Board) regarding Smith, a former Mountain Lakes teacher. Smith was employed as an Athletic Director in the district and resigned his position prior to the filing of tenure charges against him.

Mountain Lakes alleged that Smith failed to complete staff evaluations, failed to follow protocol for grant applications and failed to comply with hiring practices. The district alleged that Smith consistently refused to change his conduct in response to progressive discipline, including an increment withholding, imposition of a Corrective Action Plan (CAP), a two-week suspension with pay, mandated professional development and a final written warning letter.

According to the tenure charges (which are incorporated herein by reference), in his role as Athletic Director, Smith had the responsibility to evaluate coaches and trainers and for the years 2014-15, 2015-16 and 2016-17 should have completed 255 staff evaluations but only completed less than 50% of the required evaluations. Moreover, Smith had made explicit misleading statements indicating that the evaluations had been completed but simply maintained in his office.

Of the evaluations that Smith did complete, most contained inflated scores that did not accurately reflect the coaches' true performance and many failed to address concerns raised by student athletes, parents and/or other district administrative personnel. As a result, the district administration was kept in the dark about parental and student concerns and coaches that should have been replaced were permitted to continue their employment without consequence.

Smith also had the responsibility to evaluate physical education teachers in the district and failed to complete those required evaluations on a consistent basis. Of the 132 evaluations he was assigned between 2012 and 2017, Smith only completed 105 evaluations, requiring building principals to step in, often at the request of the teachers themselves. In fact, Smith never evaluated any of the district's elementary school physical education teachers during that time. In addition, Smith did not follow the required four prong observation report protocol when he did his evaluations; of the 105 evaluations he did complete, only 48 satisfied the four-prong criterion. Additionally, during the 2015-16 and 2016-17 school years, Smith misrepresented or falsified dates on evaluations he did complete to create the appearance that he submitted observation or conference reports on an intermittent basis during the year, when, in fact, the time stamp on the district's evaluation report software revealed that he actually submitted multiple documents on the same day.

Other charges leveled at Smith included, but were not limited to: failing to process his coaches' grant requests for additional funding; actively discouraging the coaches from applying for grants; failing to submit grant requests by the required deadline; failing to process approved grant awards in a timely manner so that student athletes had to complete the season without ever receiving the equipment; failing to ensure that all swim coaches had the appropriate certification, thereby placing the district and its students at unnecessary risk; failing to comply with his CAP plan after he was rated as ineffective in March 2017; failing to report a coach's alleged HIB (harassment, intimidation and/or bullying) conduct to the proper district administrators in violation of State law and district policy; allowing coaches to permit non-board-of-education-approved consultants to work with sports teams; never distributing the Coach's Manual to staff despite administrative directives to prepare and distribute such a document; never reporting complaints

from coaching staff and students regarding a head coach and volunteer coach's inappropriate comments toward female athletes; failing to staff the athletic office after school to address issues of transportation, field locations, maintenance, coach and fan requests; failing to clean and organize the athletic storage areas and failing to remove seasonal athletic equipment from fields.

Smith currently holds a Teacher of Social Studies and Supervisor certificates, and a Principal Certificate of Eligibility. After reviewing the above information, at its May 24, 2018 meeting, the Board voted to issue an Order to Show Cause (OSC) to Smith as to why his certificates should not be revoked.

The Board sent Smith the OSC by regular and certified mail. The OSC provided that Smith must file an Answer within 30 days. Smith responded on June 25, 2018. In his Answer, Smith denied the allegations against him generally. (Answer, ¶ 3). Smith admitted that Mountain Lakes withheld his increment, imposed a corrective action plan, gave him a 2-week suspension, mandated professional development, and issued a warning letter. *Id.* Smith alleged that he received "severance pay" which is not typically done for an administrator guilty of serious infractions. Rather, he stated that the discipline against him was the Superintendent's tactic to develop tenure charges in order to "effect managerial changes." *Id.* Further, Smith admits that evaluating physical education teachers was one of his responsibilities, but that it was the Superintendent's responsibility to evaluate his performance, which she failed to do for several years. (Answer, ¶¶ 6).

Since there were material facts in dispute, on August 8, 2018, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. On October 22, 2019, Administrative Law Judge (ALJ) Kimberly A. Moss issued an Initial Decision in the

case. *In the Matter of the Certificates of James A. Smith*, Dkt. No. EDE 11406-18 (Initial Decision, October 22, 2019).

After reviewing the record, ALJ Moss found that Smith did not complete coach and teacher evaluations, did not observe the Harassment, Intimidation and Bullying (HIB) policy, and did not report a complaint of sexual harassment. (Initial Decision, slip op. at 32). She found that these failures demonstrate inefficiency, and therefore a suspension of Smith's supervisor certificates for four months is warranted. *Id.*

Specifically, ALJ Moss found that there was contradictory testimony and that the resolution of those issues require that she make credibility determinations. *Id.* at p. 20. She found Mountain Lakes Superintendent, Ms. Mucci, to be less credible. Ms. Mucci had no issues with Smith until 2016. She found that Mucci made corrective action plans impossible to complete and that this casts doubt on Mucci's credibility. *Id.* at p. 21. Generally, ALJ Moss found Smith to be credible in most areas. He admitted that he did not follow the HIB protocol. *Id.*

Smith filed Exceptions and Reply Exceptions and the Deputy Attorney General (DAG or Deputy) representing the Board filed Exceptions as well. In his Exceptions and Reply Exceptions, Smith argued several key findings made by ALJ Moss were supported by hearsay evidence outside any exception. (Smith Exceptions at p. 3). Specifically, ALJ Moss' findings that Smith mismanaged the district's relationship with the booster club is only supported by evidence from Ms. Mucci who recalled what was said to her. *Id.* at p. 10. Additionally, Smith argued that ALJ Moss failed to recognize that the testimony regarding the evaluations Smith failed to perform constituted hearsay as well. *Id.* at p. 7-8.

Moreover, Smith argued that the factual finding that Smith mishandled a "sexual harassment" claim mischaracterizes the evidence and therefore should be rejected and cannot

justify discipline. *Id.* Smith stated that there was no evidence presented about the exact content of the comments made by the coach that was the subject of the alleged sexual harassment. The record does not contain any evidence that the coach made comments that should be considered “sexual harassment.” *Id.* at p. 15. Finally, Smith argues that ALJ Moss’ finding that Smith’s conduct was grounds for inefficiency is unsupported by the record as there were no summative evaluations presented to make that determination. *Id.* at p. 17.

The DAG filed Exceptions as well. Specifically, the DAG argued that Smith’s conduct should result in revocation of his certificates because Smith’s failure to perform responsibilities as an administrator is a serious transgression. (DAG Exceptions, p. 9). Smith repeatedly failed to perform the duties of his position and was sufficiently disruptive to the administration of the school that a revocation is warranted. *Id.* Moreover, Smith failed to report a claim of sexual harassment and HIB conduct which demonstrated a lack of judgment. Smith ignored district policy in favor of his own approach to handling the matter. *Id.*

Finally, the DAG argued that action against Smith’s certificates should not be limited to just his administrative/supervisory certificates. Several cases were cited which demonstrate that the Board takes action upon all certificates when the unbecoming conduct sufficiently relates to the instructional certificates. *Id.* at p. 10 (citing *I/M/O the Revocation of the Certificates of Hattie Black*, Dkt. No. A-2635-03T1 (App. Div. March 11, 2005)). Smith’s conduct related not only to his administrative position but also to responsibilities of a teacher. Thus, action upon all certificates is appropriate. *Id.* at p. 11-12.

Smith also filed reply exceptions to the filed exceptions by the DAG. (Smith Reply Exceptions, p. 1). Smith argues that the fact that the Board’s main witness was found unreliable completely “undercuts Petitioner’s argument that an increased penalty is appropriate.” *Id.* at p. 2.

Moreover, Smith argued that “there is no basis for an increased sanction when the party bearing the burden of proof has built its case on an unreliable witness who has been found to have engaged in conduct that is so patently unfair.” *Id.*

The Board must now determine whether to adopt, modify, or reject the Initial Decision in this matter. At its meeting of December 13, 2019, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision and submissions, the Board voted to adopt the Initial Decision with clarification as to penalty.

First, as to Smith’s arguments regarding hearsay evidence, pursuant to N.J.A.C. 1:1-15.5(a), hearsay evidence shall be admissible in the trial of contested cases in the administrative forum. Accordingly, the Board will not disturb the factual findings in this matter. ALJ Moss is in the best position to determine the weight afforded to hearsay testimony.

“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 credibility of the witnesses, ALJ Moss concluded that Smith failed to complete required coach and teacher evaluations, and failed to observe the HIB policy, while also not reporting a complaint of possible sexual harassment. Regardless of whether the incident could be deemed “sexual harassment,” the Board finds that it is clear from the record that Smith was made aware of an incident that should have been reported to administration and that he failed to report same. Moreover, Smith admitted that he did not follow the HIB policy when handling that matter. The Board believes that the above conduct is

not only inefficiency, but is also unbecoming conduct such that action against Smith's certificates is warranted.

After reviewing the entire record, the Board agrees with the ALJ's assessment regarding Smith's unbecoming conduct and agrees that a four-month suspension of Smith's supervisor certificates is appropriate in light of the findings of fact. Smith's supervisor certificates include both his principal certificate of eligibility and his supervisor certificate.

Accordingly, on December 13, 2019, the Board voted to adopt the Initial Decision and ordered a four-month suspension of Smith's Supervisor Certificate and Principal Certificate of Eligibility. On this 23rd day of January 2020, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that James A. Smith's Supervisor Certificate and Principal Certificate of Eligibility are hereby SUSPENDED for a period of four months, effective immediately. It is further ordered that Smith 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.

Rani Singh, Secretary
State Board of Examiners

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.