

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
NICHOLAS CILENTO : ORDER OF SUSPENSION
_____ : DOCKET NO: 2021-123

At its meeting of January 21, 2021, the State Board of Examiners (Board) reviewed information provided by the Woodbridge Township Board of Education (Woodbridge). Woodbridge certified tenure charges against Cilento for unbecoming conduct and other just cause for allegedly bringing and consuming alcohol at school.

On December 5, 2020, the Arbitrator assigned to the case pursuant to *N.J.S.A.* 18A:6-16 found that Woodbridge demonstrated the truth of the charges, except Charge V, and suspended Cilento for a period of three (3) months from his tenured employment. *In the Matter of the Tenure Hearing of Nicholas Cilento*, Dkt. No. 282-10/19 (Arbitrator's Decision, December 5, 2020). The matter was referred to the New Jersey State Board of Examiners (Board) for review.

In the tenure charges (which are incorporated herein by reference), Woodbridge alleged that on May 20, 2019 and May 21, 2019 Cilento brought a water bottle filled with alcohol to school and was observed consuming it while in the front lobby. Prior to this incident, on April 17, 2018, Cilento received a written reprimand for using his cellular phone during PARCC testing, in violation of testing protocol.

The assigned Arbitrator found that the facts were “essentially undisputed.” *See* Tenure Decision at p. 2. Cilento has a history of alcoholism and sought treatment four or five times via Alcoholics Anonymous and the Employee Assistance Program but relapsed each time. *Id.* at p. 3. Cilento admitted that he brought a small plastic water bottle of vodka to school on the mornings of May 20 and 21 and had several sips of vodka each day. *Id.* Accordingly, the Arbitrator found that Cilento possessed and used alcohol on school premises while on duty on May 20 and May 21, 2019.

The Arbitrator found that drinking on duty on school grounds is prohibited and contrary to standards of professional behavior, board policies, law, and code and that it constitutes conduct unbecoming a teacher. *Id.* at p. 4. Tenure Charges I-IV were sustained. *Id.* The Arbitrator determined that the appropriate penalty for Cilento's conduct was not dismissal, but rather a three (3) month suspension and reinstatement on a Last Chance basis. *Id.* at p. 11.

Cilento currently holds a Teacher of Handicapped certificate. Upon review of the above information, at its February 26, 2021 meeting, the Board voted to issue Cilento an Order to Show Cause as to why his certificate should not be revoked.

The Board sent Cilento the Order to Show Cause by regular and certified mail on March 3, 2021. The Order provided that Cilento had 30 days to respond. Cilento filed an Answer on April 1, 2021. In that Answer, Cilento admits that he was the subject of tenure charges but indicates that the charges and arbitration award speak for itself and/or is otherwise denied. Answer at ¶¶2-9.

Thereafter, pursuant to *N.J.A.C.* 6A:9B-4.6(e), on April 13, 2021, the Board sent Cilento a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Cilento 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 found just cause 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 his offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Cilento was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Cilento filed a written response on June 7, 2021.

In that response, Cilento argued that the Final Administrative Decision of the Department of Education in the underlying tenure matter bars the imposition of any suspension or revocation on his teaching certificates. (Cilento Submission at p. 1). Specifically, because the arbitration award ordered that Cilento maintain his teaching position, the Examiners cannot remove him from that position via a suspension or revocation. *Id.* at p. 2. The allegations have already been litigated and adjudicated via the arbitration Award. Cilento further asserts that the legal principles of *res judicata* and collateral estoppel bar the Board's actions on the Order to Show Cause. *Id.* at p. 5. Moreover, he indicates that because the Department of Education "exercised quasi-judicial authority over the tenure proceeding by and through the Arbitrator, and exercise the same quasi-judicial authority over the OSC proceeding by and through the Examiners, the Examiners were, *de jure*, a party to the tenure case for purposes of *res judicata* application. *Id.* at p. 6. Finally, Cilento provided documents in support of his argument that he has

over a decade of “commendable service” to Woodbridge students and that his conduct did not adversely impact Woodbridge. *Id.* at p. 9.

The hearing was scheduled for the Board’s July 30, 2021 meeting. Mr. Cilento appeared with his counsel, Edward A. Cridge, Esquire. Mr. Cridge detailed the argument contained in the hearing submission, specifically as it relates to Cilento’s legal position regarding *res judicata* and collateral estoppel. Cilento appeared and indicated that he was not drunk at school and that he made a terrible mistake. He suffers from alcoholism and has completed a rehabilitation program in Florida and has weekly conversations with his sponsor. He has maintained his sobriety through the tenure challenge and his divorces. He does not believe one incident should define his career.

The threshold issue before the Board in this matter is whether Cilento’s conduct constitutes conduct unbecoming a certificate holder or other just cause. At its meeting of September 17, 2021, the Board considered the allegations in the Order to Show Cause as well as Cilento’s Hearing Response and testimony. The Board determined that no material facts related to Cilento’s offense were in dispute since the Arbitration Award found that the facts were undisputed – Cilento possessed and used alcohol on school premises while on duty on May 20 and May 21, 2019. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C.* 6A:9B-4.6(h). After reviewing the allegations, the Board found that Cilento engaged in unbecoming conduct.

The Board must now determine whether Cilento’s conduct, as set forth in the Order to Show Cause, provides just cause to act against his certificates pursuant to *N.J.A.C.* 6A:9B-4.4. 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-4.4. “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. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff’d*, 131 *N.J.L.* 326 (E & A 1944). Cilento’s conduct in drinking alcohol at work, along with bringing alcohol to school clearly indicates a serious lapse in judgment. However, given Cilento’s presentation of mitigation, specifically his exemplary record prior to this incident, his passion for teaching, the fact that there is no record of concerns related to his teaching, even while he was addressing his alcoholism, the Board concludes that the appropriate response to

his breach is a two-year suspension of his certificates. This is consistent with the Board's prior decision in similar cases, specifically *IMO Certificates of Jennifer Pechko*, Dkt. No. 1718-163 (State Board of Examiners Decision, February 28, 2020).

Further, the Board is not bound to the penalty assessed by an Arbitrator as it relates to a challenge on an educator's tenure. Cilento's arguments would essentially hamstring the Board from exercising its responsibility and statutory authority on revocation/suspension of educator certificates, usurping the Board's expertise and authority on these matters. The Board is a separate body and applies its own, independent decision as to whether the specific conduct established in the tenure proceedings warrants action on an educator's teaching certificates. The "responsibility of the [Board] under N.J.S.A. 18:6-38 is not the same as the Commissioner's obligation to determine the appropriate penalty once tenure charges brought against a teaching staff member have been sustained." *IMO Theresa Lucarelli*, Dkt. No. 2-99 (State Board of Education Decision, May 5, 1999), citing *IMO John Ahern*, Dkt No. ___ (State Board of Education Decision, August 5, 1987).

Accordingly, on September 17, 2021, the Board voted to suspend Nicholas Cilento's Teacher of the Handicapped certificate for a period of two years. On this 28th day of October 2021 the Board voted to adopt its formal written decision and it is therefore ORDERED that Cilento's certificates are hereby suspended for a period of two years, effective immediately. It is further ORDERED that Cilento 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

*Board members Zeitz recused from this matter

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