

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
DAVID J. MCKENNA	:	ORDER OF REVOCATION
_____	:	DOCKET NO: 1819-109

At its meeting of November 1, 2018, the State Board of Examiners (Board) reviewed information it received from the Office of Student Protection (OSP), Bayonne Board of Education, and the Hudson County Prosecutor's Office regarding David J. McKenna. On December 12, 2017, McKenna was charged with two (2) counts of Aggravated Assault (2nd degree), N.J.S.A. 2C:12-1(b)(1); Possession of a Weapon for Unlawful Purpose (2nd degree), N.J.S.A. 2C:39-4(a)(1); Unlawful Possession of a Weapon (2nd degree), N.J.S.A. 2C:39-5(b)(1); and Unlawful Possession of a Weapon in School (3rd degree), N.J.S.A. 2C:39-5(e)(1). It was alleged that, on November 30, 2017, McKenna pointed a handgun at an assistant hockey coach and student. On June 29, 2018, McKenna waived indictment and pled guilty to Unlawful Possession of a Weapon (2nd degree), N.J.S.A. 2C:39-5(b)(1), and was accepted into the Pre-Trial Intervention (PTI) program for a period of twelve (12) months, plus 50 hours of community service, along with other fines and assessments.

McKenna currently holds a Teacher of Social Studies Certificate of Eligibility, issued in July 2008; and a standard Teacher of Social Studies certificate, issued in August 2010.

After reviewing the above information, at its December 17, 2018 meeting, the Board voted to issue an Order to Show Cause (OSC) to McKenna as to why his certificates should not be revoked.

On January 24, 2019, the Board sent McKenna the OSC by regular and certified mail.

The OSC provided that McKenna must file an Answer within 30 days pursuant to *N.J.A.C.*

6A:9B-4.6(b). Following a granted extension of time to respond, McKenna filed an Answer on March 29, 2019. *See Answer*. In his answer, McKenna admitted the criminal charges and that he was accepted in PTI for 12 months. *Id.* at ¶ 3. He denied that he pointed a handgun at an assistant hockey coach and a student. *Ibid.*

As there were material facts in dispute, on April 9, 2019, the Board transmitted the matter to the Office of Administrative Law (OAL) for a hearing as a contested case. On July 26, 2024, Administrative Law Judge (ALJ) Susana E. Guerrero issued an Initial Decision in the case. *In the Matter of the Certificates of David J. McKenna*, OAL Dkt. No. EDE 05183-19 (Initial Decision, July 26, 2024).

After reviewing the testimony and the record, the ALJ found that McKenna did not dispute that criminal charges were filed against him, that he pled guilty to unlawful possession of a weapon, and that he completed PTI. *Id.* at 3. The ALJ heard testimony from Nicholas Brancatella, Scott Lewkowitz, student L.J., and McKenna. *Id.* at 3-6. The ALJ found L.J.'s testimony to be credible and corroborated by Lewkowitz. *Id.* at 7. The ALJ did not find McKenna's testimony credible as it was difficult to believe his version of the facts. *Ibid.*

The ALJ's findings of fact included that McKenna removed the gun from an assistant coach's/state trooper's belt that was in McKenna's office; that although Lewkowitz told McKenna not to touch the gun, McKenna took the gun and proceeded to sit in a chair while holding the gun, not knowing whether it was loaded; that the chair faced the door to his office; that when Lewkowitz opened the office door, McKenna was in the chair holding the gun, and that Brancatella and L.J. were standing outside the office door at the time waiting to go into the office. *Id.* at 8. Further, the ALJ found that when L.J. stepped into the doorway to enter the office, L.J. saw McKenna sitting in a chair holding the gun pointed at L.J., that L.J. initially

moved out of the direction of the gun, but then proceeded to enter the office, and L.J. told McKenna to put the gun away and he could get the assistant coach in trouble. *Id.* at 8-9. The ALJ also found that McKenna hold the gun for at least a minute before returning it to the holster, he did not intend to harm L.J. or anyone else while he held the gun, and that while L.J. was started to initially see the gun pointed in his direction, he did not feel he was in danger, nor did he feel threatened by McKenna. *Id.* at 9.

Based on the above findings of fact, the ALJ concluded that McKenna engaged in conduct unbecoming a certificate holder. *Id.* at 11. The ALJ explained that “[e]ven after Lewkowitz instructed McKenna not to touch or play with the gun, McKenna continued to hold the gun, sat at the desk, and then pointed it at a student entering the office.” *Id.* at 12. After finding that McKenna “demonstrated an extraordinary lack of judgment in brandishing a potentially loaded gun in the presence of two staff members and a student and pointing the gun at the student, even if momentarily and without an intent to harm the student[,]” the ALJ determined that such actions warranted a revocation of his teaching certificates. *Id.* at 12. The ALJ reasoned that he acted irresponsibly and demonstrated a “disturbing lack of judgment and self-control” when he “exposed two colleagues and a student to potentially life-threatening danger with his actions.” *Ibid.*

Neither party filed Exceptions to the ALJ’s Initial Decision.

The Board must now determine whether to adopt, modify, or reject the Initial Decision in this matter. At its meeting of September 19, 2024, the Board reviewed the Initial Decision. After full and fair consideration of the Initial Decision, the Board voted to adopt the Initial Decision.

The Board, in reviewing the matter, does not find that the ALJ’s findings to be arbitrary or not based on sufficient credible evidence. Further, the ALJ’s conclusions are proper under the law.

The Board's long-standing belief is that teachers must serve as role models for their students. "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. A "violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct" may provide the basis for a finding of unbecoming conduct. *Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4, 14 (2017) (quoting *Karins v. City of Atlantic City*, 152 N.J. 532, 555 (1998)) (internal quotation marks omitted). The "elastic" concept of "conduct unbecoming" includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for . . . [public] employees and confidence in the operation of [public] services." *In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960) (internal quotations and citations omitted); see also *Bound Brook Bd. of Educ.*, 228 N.J. at 13.

As noted above, after reviewing the testimony in the record, the ALJ found that McKenna engaged in the conduct alleged in the OSC. In this case, McKenna's conduct was certainly unacceptable and certainly unbecoming of a teacher. The Board agrees that McKenna's actions in removing a gun from a colleague and law enforcement officer's belt, without his consent, and holding the potentially loaded gun pointing it at anyone who might approach his office was dangerous and certainly lacked judgment or self-control, and does not comport with "role model" behavior. Thus, the Board agrees that McKenna engaged in unbecoming conduct.

The ALJ determined that a revocation of his certificates was appropriate for the conduct. The Board agrees. Holding and pointing a gun that could be loaded in a school while staff and a student were present is not exemplary restraint and mature self-control and not conduct we expect

of a role model for children. Thus, the Board finds that revocation of McKenna's certificates is warranted in this matter.

Accordingly, on September 19, 2024, the Board voted to adopt the Initial Decision. On this 1st day of November 2024, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that David J. McKenna's Teacher of Social Studies Certificate of Eligibility and standard Teacher of Social Studies certificate are hereby REVOKED, effective immediately. It is further ordered that McKenna 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.