

STATE BOARD OF EXAMINERS DKT. NO. 1011-141
OAL DKT. NO. EDE 14576-1145
AGENCY DKT NO. 10-10/13A

IN THE MATTER OF THE REVOCATION OF :
THE CERTIFICATES OF BENJAMIN NORTON : COMMISSIONER OF EDUCATION
BY THE NEW JERSEY STATE BOARD : DECISION
OF EXAMINERS :

Order of Revocation by the State Board of Examiners, September 24, 2013

For the Respondent-Appellant, Harold N. Springstead, Esq.

For the Petitioner-Respondent State Board of Examiners, Geoffrey Stark,
Deputy Attorney General (John J. Hoffman, Acting Attorney General of New Jersey)

Appellant challenges the determination of the New Jersey State Board of Examiners (Board) that his actions warranted the revocation of his teaching certificate. As a threshold issue, appellant also challenges the Board's inclusion on the Statement of Items Comprising the Record (SICR) of certain items that were not admitted into evidence at the hearing in the Office of Administrative Law (OAL), and the Board's decision to deny his Motion to Settle the Record with respect to those items.¹

Regarding the SICR, appellant argues that it was inappropriate for the Board to include police reports, photographs, witness statements, and a partial transcript of his criminal trial, since those items were not admitted into evidence at the OAL. The Board argues that, although not admitted into evidence at the hearing, the items in question were "sent to the Commissioner and were

¹ While this appeal was pending, appellant filed with the Board a Motion to Settle the Record, which the Board denied. Appellant filed with the Commissioner a Notice of Appeal of that decision. The Commissioner notes that, pursuant to *N.J.A.C.* 6A:4-2.5(b), the proper procedure for seeking review of that decision is by way of motion.

the underpinning of the Board's [Order to Show Cause]." The Board contends that the documents it reviewed when it decided to issue the Order to Show Cause (OTSC) are "clearly part of the Board's file in this case and must be included in the record."

Pursuant to *N.J.A.C. 6A:4-2.5(a)*, "the record on appeal shall consist of all papers and exhibits, including audio and video recordings, on file with the Board of Examiners, together with all entries as to matters made on the record, any stenographic transcript, and all papers filed with the Commissioner." The clear and unambiguous language of the regulation requires inclusion on the SICR of all papers on file with the Board. The documents reviewed by the Board in determining to issue an OTSC to appellant fall squarely within that regulatory definition. Accordingly, the Commissioner finds that the documents in question are part of the record on appeal and were properly included in the SICR.

On the merits of the appeal, appellant argues that the Administrative Law Judge's (ALJ) factual findings, adopted by the Board, were based upon erroneous credibility determinations. The appellant further argues that the ALJ erroneously excluded from evidence certain documents he offered as evidence of his teaching ability. The appellant also contends that the Commissioner should reject the Board's decision revoking his certificate and impose a suspension of no more than two years.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*.

Initially, the Commissioner notes that the large majority of appellant's objections to the Board's decision are fundamentally rooted in his disagreement with the ALJ's credibility determinations and with the resultant weighing of testimonial and documentary evidence. The

standard of law with respect to objections of this type is well established,² and in the present instance, the Commissioner finds the ALJ's credibility and fact determinations, as adopted by the Board, to be both clearly explained in the Initial Decision and sufficiently supported by the record. The Commissioner further finds that appellant has offered nothing in his papers that would warrant disturbing the deference to which the ALJ – as the finder of fact who had the greatest opportunity to observe the demeanor of witnesses – is entitled in this regard. *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987).

Contrary to the appellant's assertions on appeal, the credible evidence in the record amply supports the Board's assessment of the appellant's conduct, which included a pattern of highly inappropriate and unprofessional behavior. Further, in light of appellant's serious and repeated lapses in judgment, the Commissioner finds that the revocation of appellant's certificate is the appropriate penalty. Consequently, the Commissioner finds no basis upon which to disturb the Board's decision.

Accordingly the decision of the State Board of Examiners is affirmed for the reasons expressed therein.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 25, 2014

Date of Mailing: October 3, 2014

² N.J.S.A. 52:14B-10(c) states in pertinent part:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to P.L. 2008, c. 36.