

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
JEFF B. SIMON : ORDER OF SUSPENSION
_____ : DOCKET NO: 1415-254

At its meeting of July 30, 2015, the State Board of Examiners (Board) reviewed a decision forwarded by the Commissioner of Education (Commissioner) that had dismissed Jeff B. Simon from his tenured position as a Principal with the Freehold Regional School District (Freehold). *In the Matter of the Tenure Hearing of Jeff Simon*, Docket No. 49-2/12 (Commissioner's Decision, March 7, 2013). Simon currently holds a Principal Certificate of Eligibility, issued in May 2001 and a Principal certificate, issued in January 2003.

This case originated when Freehold certified tenure charges against Simon alleging unbecoming conduct, insubordination and other just cause while he was principal at Manalapan High School. Specifically, Freehold alleged that Simon: improperly received monies for security guard pay; authorized an extra duty assignment and pay authorization for an unapproved position; did not account for missing play proceeds from the December 2011 High School play; transferred student activity funds from the Yearbook account to purchase baseball championship rings and could not account for missing proceeds from a football game and then tried to cover it up. The district also alleged that Simon violated district policies regarding the conduct of fire drills; allowed pizza sales to be held during fire drills and allowed secretarial staff to remain in the building during a fire drill.

In a Decision dated March 7, 2013 (which is incorporated herein by reference), the Commissioner concurred with the Administrative Law Judge's (ALJ) conclusion that Freehold had proven that Simon was guilty of unbecoming conduct. The Commissioner found that Simon violated district policy by: improperly requesting and allowing monies to be taken out in cash to pay the security guards; mishandling proceeds from the school play by failing to put them in a safe place and not properly accounting for them; improperly transferring funds from the Yearbook account to pay for baseball championship rings; improperly failing to report and then covering up a shortage in football game

proceeds reported by a staff member; conducting rapid fire dismissal drills and failing to conduct the appropriate number of statutorily required fire drills for September 2009, September 2010, March 2011, October 2011 and November 2011; allowing pizza sales to take place during rapid dismissal fire drills and allowing staff to remain in the building during a rapid dismissal fire drill. The Commissioner also agreed with the ALJ that Simon's conduct warranted his dismissal from his tenured employment. Simon was dismissed from his tenured employment with Freehold as a result of the unbecoming conduct proven in the tenure proceeding and the Commissioner transmitted the matter to the Board for its review.

Thereafter, on September 17, 2015, the Board issued Simon an Order to Show Cause as to why his certificates should not be revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Simon the Order to Show Cause by regular and certified mail on September 23, 2015. The Order provided that Simon's Answer was due within 30 days. Both the certified and regular mail copies were returned as "Not Deliverable as Addressed." After securing a new address for Simon, the Board re-sent the Order to Show Cause by regular and certified mail on October 20, 2015. Simon filed his Answer on November 23, 2015.

In that Answer, Simon provided background information about his education and family life so that the Board could see "who I am as a person and then who I am as an educator." (Answer, p. 1). He also listed many of his accomplishments during his long career as both a teacher and a principal. (Answer, pp. 1-2). Simon added that he was extremely remorseful for the mistakes he made as principal of Manalapan High School and acknowledged that "I deserved to be punished for violating the policies I did, and for not being totally familiar with all the rules and regulations I should have been." (Answer, pp. 2-3). He emphasized the findings in the Initial Decision concluding that his actions were examples of poor judgment that did not cause harm to anyone or were premeditated, cruel or vicious. (Answer, p. 3, 4). Simon noted that both he and the two district security officers testified that he never took money to pay the security officers for working a school event but, for some reason, the ALJ chose not to believe them. (Answer, p. 4). As for the missing proceeds from the High School play, Simon stated that he "was never told that money was missing from the play proceeds until approximately 2 months after I was

removed from my office.” (Answer, p. 5). He noted that he personally went to the police department to file a report to see if they would investigate the missing money. (Answer, p. 5). He stated that the county prosecutor’s office, which did investigate, knew he did not take the money but informed him that there were procedural problems in how the money was handled. (Answer, p. 5). Simon added that the district never reported the money missing until after he went to the police. (Answer, p. 5). He acknowledged that he agreed with the Judge’s decision that he mishandled the money and should have kept it in the safe at all times. (Answer, p. 5). Simon also stated that, “moving forward I certainly know what steps I need to put in place to avoid this from happening again.” (Answer, p. 5). Simon also admitted that he transferred student activity funds from the Yearbook account to purchase baseball championship rings but argued that he believed it was something he was allowed to do. (Answer, p. 5). He added that his secretary, who was the school treasurer for 15 years, never told him he was not allowed to make the transfer. (Answer, p. 5). Simon claimed he passed every district audit he had during his five years at Manalapan High School and that “clearly this was an example of me not knowing the rules as opposed to an attempt to deceive or be dishonest.” (Answer, p. 5). Simon also clarified that the incident involving missing proceeds from the football game was thoroughly investigated by the district and the superintendent found that Simon did not do anything wrong. (Answer, p. 6). Simon said the superintendent’s only concern was that Simon did not report the missing funds to the district. (Answer, p. 6). Simon added that he received tenure at the end of that school year. (Answer, p. 6). He added that the teacher who accused him of ordering her to cover up the incident was kept in her position after she admitted losing the money and covering it up. (Answer, p. 6). Simon stated that “of all the charges brought against me this is the most upsetting, infuriating and egregious. I **never, ever, ever** would have directed a teacher to cover up money that was lost.” (Answer, p. 6, emphasis in original). Simon acknowledged that “after sitting through the trial I did realize that I made mistakes about the proper way to conduct fire drills for thedistrict,” noting that he did not know that Rapid Dismissal Fire Drills were unacceptable as he had been doing those types of drills for over 30 years in various districts. (Answer, p. 6). Simon challenged the tenure finding regarding pizza sales during fire drills, stating that there were pizza sales prior to the drills but not during them. (Answer, p. 7). Simon also admitted he allowed

secretarial staff to remain in the building during a fire drill, but denied that he never continued a meeting during a fire drill as he had “specific duties and responsibilities that I had to take care of during drills.” (Answer, p. 7). In the remainder of his Answer, Simon acknowledged that he had made mistakes but added that working with students is what he loved and hoped to continue to do so. (Answer, pp. 7-8). He reiterated that the ALJ found that the district did not meet its burden to prove “that [Simon] was unfit to perform his duties as principal.” Simon therefore asked the Board to give him a second chance: ‘I look forward to proving that I am the quality educator and person my students, my own children, my colleagues and the parents and communities I have served know me to be.’” (Answer, pp. 8-9).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on December 17, 2015, the Board sent Simon a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Simon was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against his certificates as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Simon’s offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Simon was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Simon filed a written response on January 20, 2016. Simon also asked to appear before the Board.

In his Hearing Response, Simon reiterated, with more specificity, his response to the tenure charges that had been brought against him and which he had previously addressed in his Answer. (Hearing Response, pp. 1-8). He argued that revocation or suspension of his certificates “would be unduly cruel and excessively severe” and emphasized the ALJ’s finding that he was not unfit to be a principal. (Hearing Response, p. 1). Simon also noted that the ALJ had found that the district never gave him any notice of problems or notice to change any of his conduct. (Hearing Response, p. 1). Simon also argued that witnesses during his tenure hearing changed their testimony and, in one case, a teacher was named Teacher of the Year, after she testified against him even though she admitted to covering up lost

funds. (Hearing Response, pp. 3, 4). Simon also acknowledged that while he did not follow all district policies regarding fire drills, the Manalapan Fire Chief noted that the policies were outdated and non-compliant. (Hearing Response, pp. 4-5). Simon also stated that the Fire Chief was present for various fire drills and never had any problems with Simon's procedures. (Hearing Response, p. 5). Finally, Simon claimed that "there is not a single count on which evidence established unbecoming conduct on my part or any justification whatsoever for any additional punishment against me including suspension or revocation of my certificate." (Hearing Response, p. 8).

In testimony before the Board, Simon noted that he had spent 32 years in education as both a teacher and an administrator. He added that he had crossed paths with thousands of students during the course of his career. Simon indicated that he was currently working in New York as an Assistant Principal and that he was thoroughly cleared to teach there and that his New York license was not under review. He noted that he was never given any indication of wrongdoing and had great evaluations for five years prior to being served with tenure charges. Simon admitted that he had made mistakes in not being fully versed in district policies but was hoping that the Board would see he was worthwhile to continue working in New Jersey, adding that his actions did not benefit himself or cause injury to anyone.

The threshold issue before the Board in this matter, therefore, is whether Simon's conduct constitutes conduct unbecoming a certificate holder. At its meeting of September 16, 2016, the Board considered the allegations in the Order to Show Cause as well as Simon's Answer, Hearing Response and testimony. The Board determined that collateral estoppel applied as to the facts found in the tenure hearing and therefore no material facts related to Simon's offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17, 2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings). Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Simon's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.5*. 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*. In this case the record was replete with instances which demonstrate that Simon engaged in conduct that did not adhere to district policies. There can be no dispute that Simon's conduct, in its totality, amply demonstrated his unfitness to continue in his tenured position in that district. It is well settled that unfitness to teach may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. Of Educ.*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943), *aff'd* 131 *N.J.L.* 326 (E&A 1944). Here, however, where the conduct arose more from Simon's failure to familiarize himself with district procedures rather than purposeful acts of malfeasance or insubordinate behavior, and where he otherwise received excellent evaluations and no prior notice of wrongdoing from the district, the Board determines that the appropriate response to Simon's established conduct is a one-year suspension of his certificates.

Accordingly, on September 16, 2016, the Board voted to suspend Jeff B. Simon's Principal Certificate of Eligibility and his Principal certificate for a period of one year, effective immediately. On this 1st day of November 2016 the Board voted to adopt its formal written decision and it is therefore ORDERED that the suspension of Simon's certificates be effective immediately. It is further ORDERED that Simon 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.

Robert R. Higgins, Secretary
State Board of Examiners

RRH/MZ/th
Date of Mailing:

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