

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
MICHAEL CARMICHE, JR. : ORDER OF SUSPENSION
_____ : DOCKET NO: 1415-221

At its meeting of April 17, 2015, the State Board of Examiners (Board) reviewed information it received regarding Michael Carmiche, Jr. The Division of Criminal Justice, the Morris County Prosecutor's Office and the Office of Student Protection (OSP), formerly known as the Criminal History Review Unit, provided information to the New Jersey State Board of Examiners (Board) regarding Carmiche. On December 2, 2013, Carmiche was accepted into a Pretrial Intervention (PTI) program for 12 months after being indicted for Aggravated Assault. Carmiche completed PTI and the charges were dismissed on December 23, 2014. According to the criminal complaint, Carmiche assaulted his former girlfriend on multiple occasions, including one instance where he kicked her in the knee, causing ripped tendons, and another instance where he twisted her arm, causing a sprain and torn ligaments. Carmiche was also emotionally abusive and threatened to do physical harm to his former girlfriend using martial arts weapons.

Carmiche currently holds a Teacher of Health and Physical Education and Teacher of Driver Education certificates. After reviewing the above information, at its May 21, 2015 meeting, the Board voted to issue an Order to Show Cause (OSC) to Carmiche as to why his certificates should not be revoked.

The Board sent Carmiche the OSC by regular and certified mail on May 26, 2015. The OSC provided that Carmiche must file an Answer within 30 days. Carmiche responded on June 22, 2015. In his Answer, Carmiche admitted that he completed pretrial intervention (PTI), but denied the allegations of assault. (Answer, ¶¶ 3-5).

Since there were material facts in dispute, on July 27, 2015, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. On October 11, 2019, Administrative Law Judge (ALJ) Thomas R. Betancourt issued an Initial Decision in the case. *In the Matter of the Certificates of Michael Carmiche, Jr.*, Dkt. No. EDE 11340-15 (Initial Decision, October 11, 2019).

After reviewing the record, ALJ Betancourt found that Carmiche assaulted and verbally abused his former girlfriend and that it constituted conduct unbecoming a teacher. He found that such conduct warranted a 2-year suspension of certificates. (Initial Decision, slip op. at 16.) After noting that assault of one's girlfriend constitutes unbecoming conduct, ALJ Betancourt found that the conduct did not occur at school or during a school function and as such, Carmiche's behavior was outside the scope of his employment as a teacher; while egregious, the conduct does not warrant revocation. *Id.* at ¶ 15. Carmiche filed Exceptions and the Deputy Attorney General (DAG or Deputy) representing the Board filed Exceptions as well.

In his Exceptions and Reply Exceptions, Carmiche argued that the ALJ's finding that Carmiche assaulted his former girlfriend was based upon vague testimony because Ms. Zuzuro, Carmiche's former girlfriend, was unable to demonstrate/testify that certain events occurred on specific dates. (Exceptions, p. 3). Moreover, Carmiche argued that Ms. Zuzuro presented numerous photos but she did not preserve any computer evidence of the dates the photos were taken. *Id.* at p. 4. Carmiche states that allowing undated, unspecified allegations to satisfy an evidentiary burden forces him to generally deny the allegations and that this is a violation of his due process rights. *Id.* at 5. Finally, Carmiche argues that his exemplary 20-year teaching record should be accounted for and that a revocation or suspension of his certificates is unwarranted. *Id.* at p. 9.

The DAG filed Exceptions as well. Specifically, the DAG argued that Carmiche's conduct should result in revocation of his certificates. Specifically, the DAG cited several cases where the conduct took place outside of school and the Board rejected the argument that conduct outside the direct scope of employment is a mitigating factor to penalty. (DAG Exceptions at p. 6, citing *New Jersey Board of Examiners v. Krupp*, 3 N.J.R. 285 (1981)). Once unbecoming conduct is established the penalty must be in line with the nature of the conduct. The DAG argues that the record is devoid of any evidence in mitigation of the penalty. *Id.* at p. 8. Moreover, it was argued that Carmiche gave vague answers and testified that he did not recall matters. The ALJ found that his failure to remember was troubling. *Id.* at p. 9.

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.

The ultimate issue in this matter is the egregious nature of the unbecoming conduct. The Board does not agree with Carmiche's arguments that Ms. Zuzuro's recitation of the abuse was vague. Ms. Zuzuro testified to various incidents of abuse and the ALJ found her testimony to be more credible than that of Carmiche. As noted above, ALJ Betancourt found that Carmiche engaged in unbecoming conduct that was of an egregious nature. After reviewing the entire record, the Board agrees with the ALJ's assessment regarding Carmiche's unbecoming conduct and agrees that a two-year suspension is appropriate in light of the findings of fact. Carmiche's conduct was more than a mere argument with an ex-girlfriend, rather it was repeated physical and verbal abuse. While the conduct did not occur in school, teachers are held to a standard of care that requires self-restraint and controlled behavior.

Accordingly, on December 13, 2019, the Board voted to adopt the Initial Decision and ordered a two-year suspension of Carmiche's certificates. 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 Michael Carmiche Jr.'s Teacher of Health and Physical Education and Teacher of Driver Education certificates are hereby SUSPENDED for a period of two years, effective immediately. It is further ordered that Carmiche 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.