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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3586-21**

**IN THE MATTER OF
THE CERTIFICATES OF
NICHOLAS CILENTO,
STATE BOARD OF
EXAMINERS, NEW
JERSEY DEPARTMENT
OF EDUCATION.**

Argued January 31, 2024 – Decided June 26, 2024

Before Judges Vernoia and Gummer.

On appeal from the New Jersey Commissioner of Education, Docket No. 9-12/21A.

Edward A. Cridge argued the cause for appellant Nicholas Cilento (Mellk Cridge LLC, attorneys; Arnold M. Mellk and Edward A. Cridge, of counsel and on the briefs).

Sadia Ahsanuddin, Deputy Attorney General, argued the cause for respondent New Jersey Commissioner of Education (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Michal Czarnecki, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Nicholas Cilento, a tenured teacher, appeals from a final decision of the Acting Commissioner of Education, imposing a two-year suspension of his teaching certificate. He asks in this appeal the same question posed by the appellant in Morison v. Willingboro Board of Education, 478 N.J. Super. 229, 234 (App. Div. 2024): does "a tenure arbitrator's determination of discipline through the procedures set forth in N.J.S.A. 18A:6-17.1 prevent[] the State Board of Examiners and Commissioner from imposing a more severe sanction of suspending or revoking the licensee's certificate to teach within this State, under the procedures set forth in N.J.S.A. 18A:6-38 to -39"? In Morison, we answered that question in the negative, holding:

The statewide teacher certificate revocation process authorized in N.J.S.A. 18A:6-38 and -39 operates separately from the teacher tenure arbitration process under N.J.S.A. 18A:6-17.1. The manifest legislative intent is for the two statutes to be administered independently of one another. The proceedings involve nonidentical parties, and also different stakes, procedures, and the avenues and standards of appellate review.

[Id. at 235.]

Following Morison, we affirm the Commissioner's decision in this case.

Appellant is a tenured special-education teacher who was employed by the Woodbridge Township School District Board of Education. On September

27, 2019, the School Board filed tenure charges against him, alleging "conduct unbecoming a teaching staff member and/or other just cause, including insubordination, all of which warrant dismissal, pursuant to N.J.S.A. 18A:28-5 and 18A:6-10" and a "pattern or course of unbecoming conduct over [a] protracted period of time." Appellant does not dispute the underlying factual bases of the charges: on two consecutive days, appellant brought alcohol to school and consumed it while he was working. After the School Board certified the tenure charges, the Commissioner appointed an arbitrator. In the summer of 2020, the arbitrator presided over a hearing, during which appellant testified.

On December 5, 2020, the arbitrator issued an arbitration award and decision. Noting the underlying facts were "essentially undisputed," she found appellant's actions "constitute[d] conduct unbecoming [of] a teacher, but not insubordination" and that appellant had not engaged in a "pattern or course of unbecoming conduct over a protracted period of time" based on her opinion the two violations that occurred over two consecutive days did not constitute a "protracted period of time." She concluded "dismissal [was] not warranted in this case" and that "a three-month unpaid suspension and reinstatement on a [l]ast [c]hance basis [was] the appropriate penalty for [his] misconduct." Neither appellant nor the School Board challenged the arbitrator's findings or

sanction. Accordingly, the arbitrator's award is "final as between those parties to the arbitration." Id. at 243 (citing Policeman's Benevolent Ass'n, Local 292 v. Borough of North Haledon, 158 N.J. 392, 398-99 (1999)).

On February 26, 2021, the Board of Examiners initiated a separate action against appellant, issuing an order to show cause (OTSC) as to "why all certificates and credentials he holds . . . should not be revoked." The Board based the OTSC on the same incidents on which the tenure charges were premised and referenced the arbitrator's decision in the OTSC. Appellant filed a written response, in which he argued the arbitrator's tenure decision "bars the imposition of any suspension or revocation [of] his teaching certificate[]." More specifically, appellant argued that "because the arbitration award ordered that [he] maintain his teaching position, the [Board of Examiners] cannot remove him from that position via a suspension or revocation." Appellant further asserted "the legal principles of res judicata and collateral estoppel bar the Board's actions on the" OTSC.

After conducting a hearing during which appellant testified and his attorney argued, and after considering the undisputed facts, the Board of Examiners determined appellant had engaged in "unbecoming conduct" that "provide[d] just cause to act against his certificates pursuant to N.J.A.C. 6A:9B-

4.4" and suspended his teaching certificate for two years. Rejecting appellant's argument, the Board found it was "not bound to the penalty assessed by an [a]rbitrator as it relate[d] to a challenge on an educator's tenure." The Board reasoned that if an arbitrator's decision barred the Board from suspending a teacher's certificate, that system "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 issued an order of suspension on November 3, 2021. Six days later, the Woodbridge Township Superintendent of Schools sent appellant a letter, advising him he was terminated immediately as a result of the suspension.

On June 23, 2022, the Commissioner issued a final decision adopting the decision of the Board of Examiners. The Commissioner found "the record adequately support[ed] the Board's determination that the appellant engaged in unbecoming conduct, and that a two-year suspension of his certificate was the appropriate penalty." The Commissioner also rejected appellant's argument that the arbitrator's decision and the principles of res judicata and collateral estoppel precluded the Board from suspending his certificate. The Commissioner also

concluded "the Board's penalty determination is consistent with the factors outlined in In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967)."

This appeal followed. Appellant argues the Commissioner erred in adopting the decision of the Board of Examiners, again contending the Board could not suspend his certificate because of the arbitrator's decision, the preclusive effect of res judicata and collateral estoppel, and his due-process rights. Appellant also argues the suspension is inconsistent with Fulcomer, 93 N.J. Super. 404.

Since appellant filed this appeal, this court issued its opinion in Morison. The court in Morison engaged in an extensive analysis of "the respective frameworks of the two statutory schemes in question: (1) the issuance and revocation of certificates to teach; and (2) the discipline of tenured educators." Id. at 236. The court also considered "[t]he history of the tenure statute." Id. at 239 (citing Sanjuan v. Sch. Dist. of W. N.Y., 256 N.J. 369, 373 (2024)). Rejecting the same preclusion argument appellant makes here, the court held "[b]ecause there is no identity of parties, the doctrines of collateral estoppel and res judicata do not bind the Board of Examiners." Id. at 245. The court rejected the argument, also made by appellant here, that the Board of Examiners's

suspension or revocation of a teaching certificate violates a tenured teacher's due-process rights when an arbitrator has declined to dismiss the teacher.

We reject appellant's contention that these separate processes violate constitutional principles of due process.

....

The separate regulatory action of the Board of Examiners with respect to appellant's continued ability to serve as a teacher within this state does not amount to "an egregious governmental abuse" nor does it "shock the conscience." Nor does it offend "judicial notions of fairness" or "human dignity." The Board is lawfully acting to carry out its responsibility to protect schoolchildren from improper teacher conduct, and thereby promote their own ability to receive a public education under our laws. See, e.g., N.J. Const. art. VIII, § IV, ¶ 1. The statutory licensure system for teachers embodied in N.J.S.A. 18A:6-38 and 38.1 has a clearly rational foundation, and its co-existence with the teacher tenure laws is complementary, not deleterious.

[Id. at 246, 248 (quoting In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6, 465 N.J. Super. 111, 155 (App. Div. 2020)).]

We see no basis to deviate from our holdings in Morison. We also are not persuaded by appellant's argument the suspension is inconsistent with Fulcomer, 93 N.J. Super. at 422, and perceive nothing arbitrary, capricious, or unreasonable about the Commissioner's decision. See Parsells v. Bd. of Educ.

of the Borough of Somerville, 472 N.J. Super. 369, 375-76 (App. Div. 2022) (discussing our limited role and discretionary standard of review in appeals of agency decisions). Accordingly, we affirm.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION