

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JIMMY DYKES : ORDER OF REVOCATION
_____ : DOCKET NO: 0304-132

At its meeting of December 7, 2000, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Jimmy Dykes from his tenured position with the State-Operated School District of the City of Newark (hereafter "Newark") for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Jimmy Dykes, Docket No. 584-12/96 (November 19, 1998.) Dykes currently holds a Teacher of Physical Education certificate.

This case originated on December 6, 1996 when Newark certified tenure charges against respondent, Jimmy Dykes. The district charged him with unbecoming conduct for participating in a scheme that defrauded the State Health Benefits Commission. Dykes had allowed a psychiatrist, Dr. Carl Lichtman, to submit false claims for psychological services Lichtman supposedly had rendered to Dykes' wife. Dykes submitted an Answer to the tenure charges on February 10, 1997.

The Commissioner of Education then transmitted the case to the Office of Administrative Law (OAL). The Administrative Law Judge (ALJ) assigned to the case held the tenure hearing on July 22-23, 1998. The record closed on October 19, 1998. In a decision dated November 19, 1998, the Administrative Law Judge determined that, despite his assertions to the contrary, Dykes' was aware of the improprieties of Lichtman's scheme. (Initial Decision, slip op. at 4-5,6.) Accordingly, the ALJ ruled that Newark had sustained its burden of proving the charges by a preponderance of the

evidence. (Initial Decision, slip op. at 7.) The ALJ further concluded that Dykes' dismissal was warranted.

In a decision dated February 11, 1999, the Acting Commissioner of Education affirmed the ALJ's decision dismissing Dykes from his tenured position. The Commissioner determined that the ALJ had the benefit of observing the witnesses firsthand and that nothing in the record warranted overturning her credibility assessments. The Commissioner further held that Dykes knew that he was participating in a "seriously questionable enterprise." The Commissioner therefore concluded that Dykes' actions constituted unbecoming conduct and warranted his removal from his tenured employment as a teaching staff member with Newark. (Commissioner's Decision, slip op. at 23.) Accordingly, the Commissioner ordered Dykes' removal from his tenured employment with Newark and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Dykes' certificate.¹ Dykes appealed from the Commissioner's decision to the State Board of Education. In a decision dated June 2, 1999, the State Board of Education dismissed Dykes' appeal for failure to perfect. The Appellate Division of the Superior Court of New Jersey affirmed the State Board's decision on June 14, 2000.

Thereafter, on December 7, 2000, the State Board of Examiners issued Dykes an Order to Show Cause as to why his certificate should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

¹ On January 20, 2004, the State Board of Education adopted a new administrative code governing professional licensure and standards. N.J.A.C. 6A:9-1 et seq. Although this decision was mailed after the effective date of the new code, the Board of Examiners' decision in this case predates the effective date of

The Board sent Dykes the Order to Show Cause by regular and certified mail on February 26, 2001. The Order provided that Dykes must file an Answer within 20 days. Dykes filed an Answer on May 15, 2001. In his Answer, Dykes claimed that he was not dismissed from his tenured employment as a result of unbecoming conduct but because his lawyer was unable to file a timely appeal. He also denied that there was just cause to revoke or suspend his certificate. (Answer, ¶¶ 3-4.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on April 1, 2003, the Board sent Dykes' attorney a hearing notice by certified mail. The notice explained that, since no material facts appeared to be in dispute regarding the tenure charges, Dykes was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that, upon review of the charges against him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Since the Board had no indication that Dykes' attorney had received the hearing notice, it sent a second one to her on June 28, 2001. The certified mail response card was returned, but Dykes' attorney did not file a response to the hearing notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Dykes' conduct and loss of tenured position constitute conduct unbecoming a certificate holder. At its meeting of September 25, 2003, the State Board of Examiners reviewed the charges and Answer Dykes filed in response to the Order to Show Cause.

the new code and was therefore decided under the old code. All citations in this decision therefore are to the prior administrative code.

After reviewing his response, the Board of Examiners determined that no material facts related to Dykes' offense were in dispute since he admitted that the ALJ and Commissioner had ordered his dismissal based on conduct unbecoming a teacher. Thus, Dykes has not denied the charges in the Order to Show Cause and the Board of Examiners determined that summary decision was appropriate in this matter. N.J.A.C. 6:11-3.6(a)1.

The State Board of Examiners must now determine whether Dykes' offense as set forth in the Order to Show Cause, provides just cause to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners 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. 6:11-3.4. "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. Dykes' participation in a scheme to defraud the SHBP are inexcusable for any individual, teacher or not. Even assuming Dykes was an excellent teacher in the classroom, he has not demonstrated like behavior outside that arena. As the Commissioner noted: "...educators, by virtue of the unique position they occupy must be held to an enhanced standard of behavior and must continually realize they serve as role models to students and the community." (Commissioner's decision, slip op. at 22-23.)

Moreover, it is of no consequence that Dykes' conduct did not involve students or his duties as a teacher. It is well established that the State Board of

Examiners has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom. See Cox v. State Board of Examiners, (App. Div. Docket No. A-3527-81T3) (November 18, 1983); State Board of Examiners v. Krupp, 3 N.J.A.R. 285 (1981).

Moreover, as noted above, the Commissioner has long held that teachers serve as role models for their students. Therefore, a teacher's whole life is subject to scrutiny, not just his actions within the schoolhouse doors:

[R]espondent's argument that, because the occurrence happened in the evening away from school premises, both the Board and the Commissioner have no authority to act, is without merit. Individuals who must comport themselves as models for young minds to emulate choose the teaching profession. This heavy responsibility does not begin at 8:00 a.m. and conclude at 4:00 p.m., Monday through Friday, only when school is in session. Being a teacher requires, *inter alia*, a consistently intense dedication to civility and respect for people as human beings. The Commissioner has, on past occasions, determined tenure charges arising from incidents which happened in the evening both on and off school property. See, In the Matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County, 1965 S.L.D. 159, aff'd State Board of Education 1970 S.L.D. 448; In the Matter of the Tenure Hearing of John H. Stokes, School District of the City of Rahway, Union County, 1971 S.L.D. 623.

In the Matter of the Tenure Hearing of Robert H. Beam, 1973 S.L.D. 157, 163. Dykes therefore cannot exclude his "out-of-school" behavior from this tribunal's examination.

Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). There can be no dispute that Dykes' participation in a scheme to defraud the SHBP negates any claim he can have to being a role model for children. Thus, the only proper response to Dykes' breach is revocation.

Accordingly, it is therefore ORDERED that Jimmy Dykes' Teacher of Physical Education certificate be revoked on this 25th day of September 2003. It is further ORDERED that Dykes return his certificate to the Secretary of the State Board of Examiners, Office of Licensure and Credentials, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Michael K. Klavon, Acting Secretary
State Board of Examiners

Date of Mailing: November 4, 2004

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.