

CORRECTED

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS  
JAMES DUNCKLEY : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 1617-122

At its meeting of January 19, 2017, the State Board of Examiners (Board) reviewed a tenure decision regarding James Dunckley, a tenured teacher in the Rockaway Township School District (Rockaway). Rockaway certified tenure charges against Dunckley for unbecoming conduct and other just cause. Pursuant to *N.J.S.A.* 18A:6-16, the Arbitrator assigned by the Department of Education to hear the case, referred the tenure matter captioned *In the Matter of the Tenure Hearing of James Dunckley*, Dkt. No. 291-9/15 (Arbitrator's Decision, June 13, 2016) to the Board.

In his Decision (which is incorporated herein by reference), the Arbitrator concluded that Rockaway had met its burden of proof on the charges it brought and that Dunckley was guilty of conduct unbecoming a teacher. The Arbitrator found that, during the 2014-2015 school year, Dunckley repeatedly touched two special education students and made them feel uncomfortable. Dunckley continued this behavior despite being asked by the students to stop touching them.

One student, T.A., stated that Dunckley touched her leg above the knee, as well as her shoulder and back. She also noted that he touched her chest. When T.A. told Dunckley, "Don't touch me" he responded, "I don't touch kids." However, Dunckley continued to touch T.A. on the shoulder, collarbone and back. Dunckley's actions caused T.A. to develop anxiety attacks. Dunckley also told T.A.'s mother that T.A. was "different than other kids, more mature and is a buddy."

Another student, A.L.R., also reported that Dunckley "made her feel uncomfortable." She noted that the touching often occurred when the class watched a movie or while she was on the computer. A.L.R. stated that she told Dunckley "to stop touching her" but that it continued to occur. A.L.R. also told her school counselor that the students felt like Dunckley was staring at them so they would move their desk and seats so they could see him.

The Arbitrator also found that Dunckley was previously admonished by the administration for his conduct during the 2009-2010 school year when he had inappropriately touched two female students, inappropriately touching their hair, and stroking their shoulders, arms and back. In those instances the students asked Dunckley to stop, but his behavior continued. Both girls were removed from Dunckley's class. The Arbitrator found that "notwithstanding being counseled and warned, the present charges of 2014-2015 constitutes a continuing pattern of conduct unbecoming a staff member."

Having reviewed the entire record, the Arbitrator found that Rockaway had met its burden of proof and he therefore sustained the tenure charges against Dunckley. Dunckley was dismissed from his tenured employment with Rockaway as a result of the charges proven in the tenure proceeding and the Arbitrator transmitted the matter to the Board for its review.

Dunckley currently holds Teacher of Elementary School and Teacher of the Handicapped certificates. After reviewing the above information, at its January 19, 2017 meeting, the Board voted to issue an Order to Show Cause to Dunckley as to why his certificate should not be revoked. The Order was predicated on the charges that had been proven in the tenure hearing.

The Board sent Dunckley the Order to Show Cause by regular and certified mail on January 23, 2017. The Order provided that Dunckley's Answer was due within 30 days. Dunckley responded and indicated that he was appealing the arbitrator's decision. Accordingly, the matter was placed in abeyance pending the outcome of the appeal. On March 19, 2018, the Appellate Division affirmed the tenure arbitration decision and the matter was removed from abeyance. Dunckley submitted an Answer on March 19, 2019.

In that Answer, Dunckley admitted that Rockaway brought tenure charges against him but denied the district's allegations. (Answer, ¶ 3). He further denied several of the specific allegations, indicating that testimony that disputed the allegations during the arbitration and that the arbitrator made errors in his decision. (Answer, ¶¶ 7, 8, 9). Dunckley argued that the facts in the Order to Show Cause are insufficient to justify revocation and contests the material facts. (Answer, First and Second Defenses).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on April 8, 2019, the Board sent Dunckley a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Dunckley 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 certificate as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificate. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Dunckley's offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Dunckley was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Dunckley filed a written response on June 12, 2019. Dunckley indicated, by telephone, that he did not wish to appear before the Board.

In his Hearing Response, Dunckley argued that the arbitrator failed to perform her job competently or completely. (Hearing Response, pp. 1-2). Dunckley emphasized that the arbitrator has "no idea how many witnesses Dunckley called in his case." Id. Further, he argues that the Institutional Abuse Investigation Unit (IAIU) investigated the matter and concluded that the allegations were unfounded. Id. at 3. Dunckley has 37 years of good teaching service. The Arbitrator's award is "rife with errors and omitted significant mitigating evidence in favor of Dunckley." Id.

Dunckley further argues that the credibility of two female students during the arbitration is suspect because the arbitrator failed to acknowledge all the credibility evidence Dunckley submitted regarding these students. Id. at 9. Dunckley called all the students in his class during the relevant timeframe in 2015. Five students testified that Dunckley did not do anything inappropriate, including touching any of them personally, or touching any other student. Id. at 10. Finally, Dunckley argues that the arbitrator's finding that one witness was intimidated by him was created out of "thin air" and was "based on nothing except the ignorance and imagination of the arbitrator." Id. at 12-13. He argues that the results of this credibility determination is a "baseless and egregious abuse of discretion that truly shocks the conscience." Id. at 13.

The threshold issue before the Board in this matter, therefore, is whether Dunckley's conduct constitutes incapacity of a certificate holder. At its meeting of August 1, 2019, the Board considered the allegations in the Order to Show Cause as well as Dunckley's Answer, and Hearing Response. The Board determined that it was constrained by collateral estoppel to accept the facts as found in the tenure hearing and therefore no material facts related to Dunckley'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 Dunckley's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against his certificate 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. The record established that Dunckley touched students, making them feel uncomfortable. Moreover, the Arbitrator noted the arguments and credibility concerns Dunckley presented during the arbitration hearing, but did not find that such arguments altered her findings. Dunckley's conduct provides ample justification for the revocation of his certificate and the mitigation he presented does not compel a different result. The Board therefore believes that the only appropriate penalty in this matter is the revocation of his certificate.

Accordingly, on August 1, 2019, the Board voted to REVOKE James Dunckley's certificates. On this 19<sup>th</sup> day of September 2019 the Board voted to adopt its formal written decision and it is therefore ORDERED that Dunckley's certificates are hereby REVOKED, effective immediately. It is further ORDERED that Dunckley 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.

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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 *N.J.S.A.* 18A:6-38.4.