

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
DAVID A. CLUNE : ORDER OF REVOCATION
_____ : DOCKET NO: 1415-133

At its meeting of October 23, 2014, the State Board of Examiners (Board) reviewed a tenure decision regarding David Clune, a tenured teacher in the Black Horse Pike Regional School District (BHP). Pursuant to *N.J.S.A.* 18A:6-16, the tenure matter captioned *In the Matter of the Tenure Hearing of David Clune*, Dkt. No. 47-2/14 (Arbitrator's Decision, August 18, 2014), was referred to the Board by the Arbitrator the Department of Education had assigned to hear the case.

BHP had certified tenure charges against Clune alleging unbecoming conduct by violating district policy concerning prohibited usage of computer networks/computers; violating district policy by engaging in improper and inappropriate text messages he initiated and exchanged with two recent graduates and violating district policy by failing to report his August 28, 2013 arrest by the Gloucester Township Police Department. Specifically, BHP alleged that, between July 4, 2013 and July 6, 2013, Clune initiated and sent 70 inappropriate text or Facebook messages to two former female students, M.B. and B.M. BHP also claimed that Clune used district computers during class time or prep time to access internet sites such as Facebook, Twitter, Youtube, and gambling sites, sports-related sites and travel sites. Clune also used his school computer outside of class or prep time to access a site for an Atlantic City escort service. Finally, the district alleged that Clune did not report his August 2013 arrest for a domestic disturbance, as required by *N.J.A.C.* 6A:9B-4.1.

In his Decision (which is incorporated herein by reference), the Arbitrator concluded that Clune violated both district policy and *N.J.A.C.* 6A:9B-4.1 when he did not report his arrest, notwithstanding the fact that he was on suspension at the time. The Arbitrator also concluded that Clune violated district policy by accessing non-instructional websites during instructional or prep time between May 1, 2013 and June 24, 2013. Finally, the Arbitrator determined that many of Clune's messages to the former students were inappropriate, including telling M.B. that he felt she was "really hot" and "always have." Even after

M.B. told Clune she was only 17, he continued to pursue her and told her “Truth is I have thought u were hot for the past 2 years.” The Arbitrator found that Clune’s messaging to B.M. was also troubling, including his statement to her that “I always noticed u in the halls, between u and me...very hot and u look mature,” and his invitation to her to “shoot the shit and get baked...just me and u though...” The Arbitrator found that Clune had engaged in unbecoming conduct regarding his messaging with M.B. and B.M.

After evaluating all of the evidence and testimony in the record, the Arbitrator determined that BHP had proven the tenure charges that Clune had engaged in conduct unbecoming a teaching staff member, which warranted discipline. The Arbitrator concluded that Clune’s conduct warranted his removal from the district.

Clune was dismissed from his tenured employment with BHP as a result of the unbecoming conduct proven in the tenure proceeding and the Arbitrator transmitted the matter to the Board for its review.

Clune currently holds a Teacher of Mathematics Certificate of Eligibility With Advanced Standing, issued in March 2003 and a Teacher of Mathematics certificate, issued in July 2004. After reviewing the above information, at its December 12, 2014 meeting, the Board voted to issue an Order to Show Cause to Clune as to why his certificates should not be revoked.

The Board sent Clune the Order to Show Cause by regular and certified mail on December 17, 2014. The Order provided that Clune must file an Answer within 30 days. Clune submitted an Answer on January 22, 2015. In that Answer, Clune admitted the allegations in the Order to Show Cause but denied that there was just cause for the revocation of his teaching certificates. (Answer, ¶¶ 1-8). In his Separate Defenses/Statement of Mitigation, Clune noted that, for several years prior to the institution of the tenure charges, he was under considerable stress because he had to take care of his parents who were suffering from various serious illnesses and medical conditions. (Separate Defenses ¶ 1). Clune’s mother, to whom he was very close, contracted cancer, went into remission, relapsed and ultimately died. (Separate Defenses ¶ 1). Clune’s wife also suffered from significant musculoskeletal conditions, which

caused her to become disabled. (Separate Defenses ¶ 2). She was unable to work which caused the family financial hardship. (Separate Defenses ¶ 2). Clune noted that the texting he engaged with the former students took place over a July 4th holiday weekend when he was at the shore with his family. (Separate Defenses ¶ 4). His wife had decided not to join him causing him to become depressed and to overindulge in alcohol. (Separate Defenses ¶ 4). Clune acknowledged that this did not excuse his behavior but mitigated against the penalty of revocation. (Separate Defenses ¶ 5). The matter was then transmitted to the Office of Administrative Law for hearing.

After multiple futile attempts to contact Clune to discuss whether he wanted to pursue the penalty hearing, on April 11, 2016, Chief Administrative Law Judge (ALJ) Laura Sanders issued her Initial Decision dismissing the matter for failure to pursue and ordered the revocation of Clune's certificates. *In the Matter of the Certificates of David A. Clune*, Dkt. No. EDE 04777-15 (Initial Decision, April 11, 2016). Neither the Deputy Attorney General (DAG) representing the Board nor Clune filed Exceptions to the Initial Decision.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of May 20, 2016, the Board reviewed the Initial Decision. After full and fair consideration of the Decision, the Board voted to adopt the Initial Decision.

“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. Unfitness to hold a position in a school system 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). In this case, Clune's established unbecoming conduct in sending inappropriate texts to two former students, failing to report his arrest and accessing non-instructional websites during instructional or prep time warrants a severe penalty. Moreover, the mitigation Clune claimed in his Answer was never verified in any way since he failed to pursue his right to a mitigation hearing. Consequently, the Board therefore adopts the Initial Decision in its entirety.

Accordingly, on May 20, 2016, the Board voted to adopt the Initial Decision and ordered to revoke Clune's certificates, effective immediately. On this 23rd day of June 2016, the Board formally adopted its written decision to adopt the Initial Decision, and it is therefore ORDERED that David Clune's Teacher of Mathematics Certificate of Eligibility With Advanced Standing and his Teacher of Mathematics certificate are hereby revoked, effective immediately. It is further ORDERED that Clune 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:
via regular and certified mail

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