

79-20A

SBE Decision: <https://www.state.nj.us/education/legal/examiners/2019/sept/1617-214.pdf>

State Board of Examiners Dkt No. 1617-214

OAL Dkt. No. EDE 09566-17

Agency Dkt. No. 7-10/19A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Revocation of the
Certificates of Robert Klein, State Board of
Examiners, New Jersey Department of
Education.

Order of Revocation by the State Board of Examiners, September 19, 2019

For the Respondent-Appellant, James J. Uliano, Esq..

For the Petitioner-Respondent State Board of Examiners, Jennifer Hoff, Deputy
Attorney General (Gurbir S. Grewal, Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with appellant Robert Klein's appeal of the Order of the State Board of Examiners, dated September 19, 2019, revoking his Teacher of Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Physical Education Certificate, and Teacher of Health and Physical Education Certificates. Following the issuance of an Order to Show Cause by the Board and a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that appellant engaged in conduct unbecoming a teacher and recommended that appellant's certificates be revoked. The ALJ found that appellant unknowingly participated in a videotaped interview in his hotel room while attending the 2015 New Jersey Teachers' Convention in Atlantic City, during which he made comments portraying himself as a participant in drug culture and offering cocaine to the interviewers. The ALJ further found that his comments displayed a disregard of his professional obligations as a health teacher by appearing

to promote the use of controlled dangerous substances, were inconsistent with the conduct of any educational professional, and constitute conduct unbecoming a teacher. Thereafter, the Board adopted the Initial Decision of the ALJ and revoked appellant's teaching certificates.

On appeal, appellant maintains that he was not criminally charged for any of his actions, there were no drugs present in the video, and his conduct did not involve students or other members of the school community. He argues that he was duped by Project Veritas and that the "shock video" they created to embarrass him would not exist if the school district had not allowed a Project Veritas member into the school. He contends that his comments were made in private and were hyperbole for dramatic and/or comedic effect. For these reasons, he argues this his conduct was not unbecoming and, if it was, suspension would be the appropriate penalty.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or unreasonable. *N.J.A.C. 6A:4-4.1(a)*.

After a comprehensive review of the record, the Commissioner finds that the record adequately supports the Board's determination that appellant engaged in unbecoming conduct and that the revocation of appellant's certificates was the appropriate penalty. Appellant does not dispute that he made comments that appear to promote drug use and evasion of drug detection. While appellant characterizes his comments as exaggerations made to impress his companions, as the ALJ found and the Board affirmed, these arguments are attempts to rationalize his actions after the fact, and they do not negate the extremely poor judgment he demonstrated in making the comments. Moreover, the actions of Project Veritas in making the

comments public are irrelevant, as a private exchange that included the same comments would be no less unbecoming conduct.

There is also nothing in the record to suggest that the Board's decision to revoke appellant's certificates – based on the nature of the unbecoming conduct proven during the hearing at the OAL – was arbitrary, capricious or unreasonable. Accordingly, the decision of the State Board of Examiners is affirmed for the reasons expressed therein.¹

COMMISSIONER OF EDUCATION

Date of Decision: March 2, 2020
Date of Mailing: March 3, 2020

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).