

84-22

State Board of Examiners Dkt No. 1819-201
OAL Dkt. No. EDE 02315-20
Agency Dkt. No. 10-12/21A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Revocation of the
Certificates of Jayson V. LaVorne,
State Board of Examiners, New Jersey
Department of Education.

Order of Revocation by the State Board of Examiners, November 3, 2021

For the Respondent-Appellant, Michael J. DeMarco, Esq.

For the Petitioner-Respondent State Board of Examiners, Erin Herlihy, Deputy Attorney
General (Matthew J. Platkin, Acting Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with appellant Jayson LaVorne's appeal of the Order of the State Board of Examiners, dated November 3, 2021, revoking his Teacher of Health and Physical Education Certificate of Eligibility and Teacher of Health and Physical Education Certificate. 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 when he exposed his genitals to an Uber driver and grabbed the driver's hand in an attempt to have the driver touch appellant's genitals. Appellant was indicted for criminal sexual contact as a result of this conduct and entered into pre-trial intervention. The ALJ recommended that appellant's certificates be suspended for a period of three years, noting that the conduct did

not occur at school or during a school function, and that appellant received good evaluations during his employment. Thereafter, the Board adopted the Initial Decision of the ALJ and increased the penalty to revocation of appellant's teaching certificates, finding that appellant's conduct demonstrated a serious lapse of judgement and that revocation was supported by past precedent in matters involving sexually aggressive or suggestive conduct.

On appeal, appellant argues that the Board acted in an arbitrary, capricious, and unreasonable manner when it modified the three-year suspension recommended by the ALJ to a penalty of revocation. Appellant contends that the Board failed to consider evidence of mitigation provided by appellant at the OAL, including the fact that his conduct was the result of alcohol abuse and that he completed an outpatient alcohol rehabilitation program, continues to attend Alcoholics Anonymous (AA) meetings, and has been sober since the incident at issue. According to appellant, these factors were the most important in the ALJ's decision to suspend, rather than revoke, his certificates, and the Board's lack of consideration of these factors renders its decision arbitrary, capricious, and unreasonable. Appellant distinguishes cases relied on by the Board, which involved multiple offenses by the teachers involved, while his conduct was an isolated incident, and he has no prior or subsequent criminal history. Appellant also emphasizes that his conduct occurred outside the scope of his employment as a teacher. Appellant urges the Commissioner to reinstate the three-year suspension imposed by the ALJ.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute her 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)*. With regard to reviewing a sanction imposed by the Board, the Appellate Division has defined the standard as determining whether the “punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one’s sense of fairness.” *In re Certificates of Benjamin Norton, 2016 N.J. Super. Unpub. LEXIS 2291, *6-7* (internal citations and quotations omitted).

The Commissioner first notes that the Board’s decision does not modify any findings of fact or legal conclusions of the Initial Decision. Additionally, appellant does not contest those findings or conclusions on appeal, and, in fact, urges the Commissioner to adopt the Initial Decision. Accordingly, the Commissioner accepts the findings and conclusions reached by the ALJ in the Initial Decision, and further finds that the record adequately supports the Board’s determination that appellant engaged in unbecoming conduct.

The question of the appropriate penalty is the only area in which the Board differed from the ALJ, and the only one that appellant seeks to overturn on appeal. Upon review, the Commissioner concludes that the Board’s decision to revoke appellant’s certifications was not arbitrary, capricious, or unreasonable, nor is the penalty of revocation so disproportionate to the offense as to shock one’s sense of fairness.

Although appellant argues that the Board did not consider his evidence of mitigation, the Order of Revocation expressly refers to appellant’s argument that the corrective action he has taken demonstrates that he deserves a second chance. Moreover, while appellant contends that evidence of his alcohol rehabilitation weighed heavily in the ALJ’s decision to suspend his certificates, there is no evidence of that in the Initial Decision. The ALJ’s summary of the testimony indicates that appellant testified that he entered into rehab, attends AA

meetings, and remains sober. However, the ALJ found that appellant's testimony was not credible. Pursuant to *N.J.S.A. 52:14B-10(c)*, an agency "may not reject or modify any findings of fact as to issues of credibility of lay witnesses unless it is first determined from a review of the record that those findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." Additionally, neither the ALJ's findings of fact nor his legal analysis and conclusion refer to the mitigation evidence. In assessing the penalty, the ALJ only noted that appellant's behavior was outside the scope of his employment as a teacher, and that appellant had received continuous good evaluations during the course of his employment. The Board also considered these factors, but nonetheless determined that revocation was warranted, consistent with past cases involving similar conduct outside the scope of a teacher's employment.

The Board has previously revoked the certificates of teachers who publicly masturbated or exposed their genitals. *In re Certificates of Kevin Jordan*, 2009 *N.J. Super.* Unpub. LEXIS 2439 (App. Div. Oct. 5, 2009); *In re Certificates of John P. McCabe*, Dkt. No. 1617-240 (Board of Examiners, December 17, 2018); *In re Certificates of Scott D. Petry*, Dkt. No. 1314-230 (Board of Examiners, March 12, 2015). While appellant correctly points out that the teachers in those matters engaged in the conduct on more than one occasion, the Commissioner does not find that distinction persuasive, as the Board's decisions did not solely rely on the repetitive nature of the conduct. Moreover, appellant's conduct escalated beyond exposing his genitals when he grabbed the Uber driver's hand in an attempt to get him to touch appellant's genitals, while no element of physical contact was present in *Jordan*, *McCabe*, or *Petry*.

Accordingly, the decision of the State Board of Examiners is affirmed. Appellant's Teacher of Health and Physical Education Certificate of Eligibility and Teacher of Health and Physical Education Certificate are hereby revoked.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 26, 2022
Date of Mailing: April 26, 2022

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.