

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
SCOTT LEVY : ORDER OF SUSPENSION  
\_\_\_\_\_ : DOCKET NO: 2021-144

At its meeting of April 1, 2021, the State Board of Examiners (Board) reviewed a tenure decision regarding Scott Levy (Levy), a tenured teacher in the Wyckoff School District (Wyckoff). Wyckoff certified tenure charges against Levy for unbecoming conduct alleging that he physically assaulted a seventh-grade student, inappropriately touched two other students and had a substantial record of misconduct.

On January 28, 2021, the Arbitrator appointed to the case pursuant to *N.J.S.A.* 18A:6-16 found that Wyckoff demonstrated the truth of the charges and suspended Levy from his tenured employment. *In the Matter of the Tenure Hearing of Scott Levy*, Dkt. No. 104-5/20 (Arbitrator's Decision, January 28, 2021). The matter was referred to the Board for review.

In the Arbitration Decision (which is incorporated herein by reference), the Arbitrator found that on January 3, 2020, Levy knocked books from a seventh grader's hands when she approached him for assistance on an assignment, and twice touched her face with the back of his hand by swinging his arms, as she resumed her petition for his help. *See* Arbitration Decision at p. 33.

Additionally, the Arbitrator found that during the 2019-2020 school year, Levy inappropriately touched another seventh-grade student on the shoulder, hand, and leg, causing her to feel uncomfortable. *See* Arbitration Decision at p. 39.

The Arbitrator also found that during the 2019-2020 school year, Levy touched another seventh-grade student inappropriately on the hand and leg, causing her to feel uncomfortable. *See* Arbitration Decision at page 43.

The Arbitrator also found that in years preceding the 2019-2020 school year, Levy engaged in pattern of inappropriate conduct towards his students, causing his students to feel uncomfortable and undermining the learning environment. *See* Arbitration Decision at page 47.

Levy is the holder of Teacher of English Certificate of Eligibility, Teacher of Elementary School Grades K-8 Certificate of Eligibility, Teacher of English Certificate, and a Teacher of Elementary Grades K-8 Certificate.

On May 13, 2021, the Board voted to issue Levy an Order to Show Cause for revocation due to the findings in the Arbitration decision. The Board sent Levy the Order to Show Cause by regular and certified mail. The Order provided that Levy's Answer was due within 30 days. Levy filed his Answer on August 12, 2021.

In that Answer, Levy admitted that Wyckoff brought tenure charges against him but denied that the Arbitrator found truth in all of the charges. (Answer, ¶¶ 2, 3). Levy stated that the Arbitrator rejected Wyckoff's claims that he committed sexual harassment and that he assaulted a student. *Id.* at ¶ 3. He further answered that the Arbitration decision speaks for itself. *Id.* at ¶¶ 4-7. He also submitted 8 additional defenses.

Levy also submitted a letter from counsel wherein he argues two additional matters. The first is that Levy was "already severely and sufficiently punished" by the Arbitrator in this matter. He further points out that Levy's actions were not found to be sexual in nature and he had no malicious intent. Levy argued that since the Arbitrator did not find a lengthier suspension or loss of tenure to be appropriate, it follows that his certificates should not be suspended because that would extend his discipline.

Thereafter, pursuant to *N.J.A.C.* 6A:9B-4.6(e), on May 19, 2022, the Board sent Levy a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Levy 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 certificates as

well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Levy's offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Levy was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Levy filed a written response on June 16, 2022. Levy did not wish to appear before the Board.

In his Hearing Response, Levy indicated that he "vehemently disputes several of the factual determinations" found by the Arbitrator in this matter. *See* Hearing Submission at p. 1. Levy argues there are several problems with the Arbitrator's findings, but he does not request that this matter be transferred to the Office of Administrative Law for a hearing because doing so could delay the processing of his retirement. *Id.* at p. 2.

Levy requests that the arbitration decision be considered in totality; specifically, the findings that Levy's physical contact with students was incidental in nature and part of his classroom management style. *Id.* He further states that if the Board accepts the Arbitrator's findings of fact, it must also accept that Levy did not commit sexual harassment and that he lacked malicious intent. *Id.*

Finally, Levy argues that the Board should consider that he was a popular director of the theater program and drama club; he organized many fundraising drives, one that raised well over \$10,000 during the 8 years he chaired the event; he founded a student run newspaper; he had a long and decorated career as an educator. *Id.* at p. 4-5. Levy states that he was already punished by virtue of his penalties from the tenure arbitration award and requested that no further discipline is warranted.

The threshold issue before the Board in this matter, therefore, is whether Levy's conduct constitutes unbecoming conduct of a certificate holder. At its meeting of August 5, 2022, the Board considered the allegations in the Order to Show Cause as well as Levy's Answer and Hearing Submission. 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 Levy'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 Levy's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.5*. The Board finds that it does.

It is important to note that the Board is not bound to the penalty assessed by an Arbitrator as it relates to a challenge on an educator's tenure. Levy's argument that he cannot or should not be "punished" beyond the Arbitration Award penalty would essentially hamstring the Board from exercising its responsibility and statutory authority on revocation/suspension of educator certificates, usurping the Board's expertise and authority on these matters. The Board is a separate body and applies its own, independent decision as to whether the specific conduct established in the tenure proceedings warrants action on an educator's teaching certificates. The "responsibility of the [Board] under N.J.S.A. 18:6-38 is not the same as the Commissioner's obligation to determine the appropriate penalty once tenure charges brought against a teaching staff member have been sustained." *IMO Theresa Lucarelli*, Dkt. No. 2-99 (State Board of Education Decision, May 5, 1999), citing *IMO John Ahern, slip opinion* (State Board of Education Decision, August 5, 1987).

Accordingly, 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*. In this case, the record established that Levy knocked a book from a student's hands, inappropriately touched two students, causing them to feel uncomfortable. The Board recognizes Levy's arguments that the touching was not found to be of a sexual nature and finds this fact mitigates the penalty in this matter. In light of Levy's lengthy otherwise successful career and the fact that the conduct was not

sexual in nature, the Board finds that the appropriate response in this matter is a one-year suspension of Levy's certificates.

Accordingly, on August 5, 2022, the Board voted to suspend Scott Levy's educator certificates for one (1) year. On this 16<sup>th</sup> day of September 2022, the Board voted to adopt its formal written decision and it is therefore ORDERED that Levy's certificates are hereby suspended for one year, effective immediately. It is further ORDERED that Levy 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.