

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE LICENSES OF : STATE BOARD OF EXAMINERS
EDWARD J. KOZIC : ORDER OF REVOCATION

DOCKET NO. 411 - 11/96 - 94

At its meeting of November 7, 1996 the State Board of Examiners reviewed information provided by the Office of Criminal History Review concerning Edward Kozic's December, 1993 conviction on charges of possession of a controlled dangerous substance. Mr. Kozic is the holder of Teacher of Industrial Arts and Teacher Coordinator of Cooperative Industrial Education licenses in New Jersey. He also applied for a county substitute license through the Gloucester County Office of Education.

Pursuant to N.J.S.A. 18A:6-7.1 et seq., he was required to undergo a criminal history background check. As a result of his conviction, Mr. Kozic was disqualified from service in the public schools of New Jersey. In accord with N.J.A.C. 18A:6-7.3, the Office of Criminal History Review forwarded the notice of disqualification to the State Board of Examiners. At its meeting of November 7, 1996, the State Board of Examiners issued Mr. Kozic an Order to Show Cause why his conviction of a drug offense and his disqualification from employment in public schools were not grounds to revoke or suspend his teaching licenses. The Order to Show Cause was mailed to Mr. Kozic by regular and certified mail on December 3, 1996. On December 20, 1996 an Answer to the Order to Show Cause was received from Michael C. Damm, Esq., on behalf of his client, Edward Kozic. Shortly after the State Board of Examiners considered Mr. Kozic's disqualification pursuant to N.J.A.C. 6:11-3.6 the Commissioner of Education (Commissioner) referred to the State Board of Examiners the tenure matter captioned, Edward Kozic v. Board of Education of the Township of West Deptford, 96 N.J.A.R. 2d (EDU) 335. In that case, the

Commissioner adopted the recommended decision of the Office of Administrative Law that Mr. Kozic was guilty of conduct unbecoming a teaching staff member. The Commissioner ordered that Mr. Kozic be terminated from his tenured employment with the Board of Education of the Township of West Deptford. Said decision was issued on August 7, 1995. The State Board of Education affirmed with modification on February 7, 1996.

During the pendency of the tenure proceedings, the appeal of his disqualification that Mr. Kozic filed with the Commissioner of Education was held in abeyance. Upon the issuance of the State Board of Education decision in the tenure matter, the Commissioner on March 28, 1996 referred the disqualification matter to the Office of Administrative law for hearing in a case captioned, Kozic v. N.J State Department of Education, OAL Dkt. No. EDU 02468-96S. On May 15, 1995, Mr. Kozic withdrew the disqualification appeal without prejudice to his right to a hearing in the future on the disqualification matter issue. The Commissioner approved the withdrawal on July 1, 1996.

Thereafter, the State Board of Education decided two cases which impacted on the hearing process conducted by the State Board of Examiners. The first case is captioned, In the Matter of the Certificates of Sheridan. The other is captioned, In the Matter of the Certificates of Vitola. Within these two cases, the State Board of Education determined that the State Board of Examiners was required to amend its regulations in order to permit it to hear directly legal matters in which materials facts are not in dispute. During the pendency of the revisions to the State Board of Examiner' regulations regarding its hearing process, all such hearings were held in abeyance. Said regulatory amendments were finally codified in May of 1997.

Pursuant to the newly amended hearing process embodied in N.J.A.C. 6:11-3.6(a)1, on June 26, 1997, a hearing notice was mailed by certified mail to Mr. Damm. A regular mail copy

was forwarded to Mr. Kozic. Said notice explained that it appearing that no material facts were in dispute, Mr. Kozic was provided an opportunity to offer legal argument on the issue of whether his conviction constituted conduct unbecoming a teacher. A reply extension was granted to Mr. Damm on July 11, 1997. On September 3, 1997, a response to the hearing notice was received from Mr. Damm on behalf of Mr. Kozic.

At its meeting of October 9, 1997, the State Board of Examiners reviewed the charge against Mr. Kozic as well as his responses to the Order to Show Cause and the hearing notice. After its review, the State Board of Examiners determined that no material facts related to Mr. Kozic's offense were in contest and that the matter could, therefore, proceed to a determination as to whether the charges levied against Mr. Kozic in the Order to Show Cause constitute conduct unbecoming a license holder pursuant to N.J.A.C. 6:11-3.6(a)1.

Mr. Kozic's reply to the hearing notice takes the form of a certification from him along with a brief and various attachments. The crux of his certification deals with a review of his purported addiction, first to alcohol, and then following an April, 1988 attack of pancreatitis, an addiction to marijuana. He attests that his addiction to marijuana was so severe that he was compelled to consume -- even by eating -- large quantities of marijuana every day. He claims that only after he was arrested on November 6, 1991 did he recognized the disease of addiction had overtaken him and that he needed to seek medical help through a licensed psychiatrist, Francene W. Black, M.D., whose report is affixed to his certification. He claims since that arrest in 1991, he has not used illegal drugs and has been totally alcohol free.

He admits he was convicted for possession of marijuana in 1993, but avers that he has successfully completed a one-year probation. He affixes to his certification his probation officer's reports including one attesting to his good character.

Mr. Kozic claims he never sold marijuana nor did he give it to anyone. Similarly, he certifies that he never used alcohol or marijuana on school grounds nor did he ever attend school under the influence of alcohol or marijuana.

Mr. Kozic also cites employment since his suspension from teaching in 1991 as proof of his rehabilitation. He attests that he is willing to submit at any time to random drug and alcohol screening to prove his commitment to the recovery process.

Mr. Kozic's argument in opposition to the suspension or revocation of his teaching licenses first claims that this case does not merit the severe penalty of a license suspension or revocation. He submits the issue in these proceeding is not his conduct some six years ago while suffering from the disease of addiction, but rather his current fitness to hold those licenses. He so argues for the reasons cited in his certification and attachments, concerning his rehabilitation since 1991.

At Points II through IV of his brief, Mr. Kozic argues that his efforts at rehabilitation and recovery from addiction are factors that should properly be considered by the Examiners in determining whether to revoke his teaching licenses. He cites to the New Jersey Law Against Discrimination (LAD) N.J.S.A. 10:5-1 et seq., and the Americans with Disabilities Act, ADA, 42 U.S.C.12151 et seq., as requiring consideration of his rehabilitation since 1993. He cites a panoply of cases where accommodation has been permitted instead of revocation or suspension. He seeks similar accommodation by being permitted to retain his licenses.

At Point V of his brief, Mr. Kozic submits that his voluntarily withdrawing his disqualification appeal before the Office of Administrative Law is not a basis for the State to suspend or revoke his licensure. He claims he withdrew said disqualification appeal on the basis that it, the withdrawal, would not be used against him in any subsequent proceedings. He contends that it is

improper for the State to now assert before the Examiners that Kozić's licenses should be suspended or revoked.

In response to Kozić's argument that it should consider evidence of his rehabilitation, the State Board of Examiners refers to the very recent decision of the Appellate Division of the Superior Court in the case captioned, In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners, decided by the State Board of Examiners March 28, 1996, aff'd State Board of Education September 6, 1996, aff'd App. Div. September 9, 1997. In that case, which both the Commissioner of Education and the State Board of Education adopted for the reasons expressed by the State Board of Examiners, the State Board of Examiners recognized that this hearing is not one which considers evidence of rehabilitation. In its decision, the State Board of Examiners held:

Neither does the language of this regulation [N.J.A.C. 6:11-3.6] support Petitioner's apparent contention that "new findings" includes evidence of rehabilitation or current ability to teach. See, e.g., In the Matter of the Revocation of the Teaching Certificate of James Noll by the State Board of Examiners, decided by the State Board of Examiners, February 7, 1990, citing Cox v. State Bd. of Examiners (App. Div. Docket No. A-3527-81T3) (November 18, 1983). Therein, it was determined that the purpose of the hearings conducted by the State Board of Examiners pursuant to N.J.A.C. 6:11-3.7(b)ii (now, N.J.A.C. 6:11-3.6(a)1) is 'to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth the Order to Show Cause, not to afford an opportunity to show rehabilitation. (Id. at p. 4)

Hence, the State Board of Examiners did not consider any evidence proffered by Mr. Kozić concerning his alleged rehabilitation or his current employment status; it instead focused on assessing whether the criminal conviction and his disqualification from employment in the public schools of this state, constitute conduct unbecoming a license holder. The appropriate penalty for his unbecoming conduct is the revocation of respondent's licenses.

As noted, Mr. Kozić alleges that his handicap, addiction, brings him within the protection of LAD and ADA. What he fails to comprehend, however, is that the determination of the State

Board of Examiners to consider suspending or revoking his licenses is not predicated on his addictions, whether to alcohol or to marijuana; the Order to Show Cause was rooted in his conviction and in his disqualification from future employment in the public schools of New Jersey. With that fact in mind, the State Board of Examiners will address his LAD and ADA claims separately.

The Law Against Discrimination was enacted to protect all classes of citizens against the evils of discriminatory acts. Evans v. Ross, 57. N.J. 223 (App. Div. 1959), certificate denied 31 N.J. 292 (1960). N.J.S.A. 10:5-4.1 and N.J.S.A.10:5-5(a) specifically protects handicapped individuals from discrimination. While the handicapped may be protected from discrimination, any conduct on their part that is criminal is not protected, even if the crime arose out of their handicapped. See N.J.S.A.10:5-21 (“Nothing contained in this act or P.L. 1945.c.169 (C10:5-1 et seq.) shall be construed to require or authorize any act prohibited by law”). As noted, the issue in this matter is whether Mr. Kozic’s conviction and disqualification is conduct unbecoming a teacher; he is not being compelled to answer for addiction. Plainly, Mr. Kozic’s conviction is not shielded by LAD. That statute is not a bar to the State Board of Examiners’ consideration of charges against him.

Similarly, the ADA does not impede the State Board of Examiners’ review of Mr. Kozic’s criminal history. The ADA, enacted in 1990, has as its goal “equality of opportunity, full participation, independent living and economic self-sufficiency” for disabled individuals. 42 U.S.C. 1210 (a) (8). It has been described as a “nation wide mandate to provide reasonable accommodations for disabled persons. “Petition of Rubinstein, 637 A. 2d 1131, 1136 (Del. 1994). Congress, in enacting the ADA, intended to prohibit unfair stereotypes about the disabled but not to shield the disabled from the consequences of misconduct. DenHartog v. Wasatch

Academy, 909 F.Sapp. 1393, 1400 (D.Utah 1995). The courts have emphasized that there is a distinction between discharging an employee for unacceptable misconduct and discharging someone because of a disability. Maddox v. University of Tennessee, 62F.3d843 (6th cir.1995). See 42 U.S.C. 12114 (c) (4) (holding that the employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment, job performance, or behavior as other employees, even if any unsatisfactory performance of behavior is related to the employee's drug use or alcoholism). Thus, Congress explicitly recognized the difference between a disability and conduct related to the disability. This distinction holds in the licensing sphere as well as in employment situation's. See State of Oklahoma Bar Association v. Busch, 919 P.2d 1114 (Okla. 1996) (the ADA did not prevent disciplining of a disabled attorney); accord, Florida Bar v. Clement, 662 So. 2d 690 (Fla. 1995). Because the Order to Show Cause was granted on Mr. Kozic's conduct, and not his handicap, the ADA does not foreclose the imposition of discipline in this matter.

In response to Mr. Kozic's contention that his voluntary withdrawal of his disqualification appeal may not be the basis for action on his licenses, the State Board of Examiners finds that this argument has no merit. It is the disqualification itself that serves as the foundation of the Order to Show Cause, and it remains in effect, notwithstanding that Kozic elected to withdraw his appeal thereof.

With that as back up, it is necessary to review the material facts in this matter, which are not in dispute. Mr. Kozic, while a teacher, was convicted of a drug offense and later disqualified pursuant to N.J.S.A. 18A:6-7.1.

In enacting that statute the Legislature sought to protect public school pupils from contact with individuals who it deemed to be a danger to them. It therefore barred from employing those

individuals convicted of a drug offense. This strong policy statement, that unrehabilitated drug offenders are precluded from serving in a position that brings them in contact with public school pupils, is in accord with the Commissioner's policies regarding those who use illegal substances. In In the Matter of the Tenure hearing of David Earl Humphreys, 1978 S.L.D. 689 he emphasized that the use of drugs and the possession of drugs are inconsistent with the State's policy to eliminate drug abuse in the schools.

Mr. Kozic has been disqualified from employment in public schools because of his drug offense. Accordingly, in light of this State's vigorous policy opposing the use of illegal drugs, Mr. Kozic's disqualification for the use thereof is deemed conduct unbecoming a license holder.

Similarly, the conviction itself provides a reason for taking action on Mr. Kozic's certificates. School law cases have traditionally recognized the right of the State Board of Examiners to revoke licenses where the teacher was involved in criminal activities, even if the activities were not related to the classroom. See Cox v. State Board of Examiners, (App. Div. Docket No. A-3527-8113) (November 18, 1983); State Board of Examiners v. Krupp, 3 N.J.A.R.285 (1981). Since the State policy is to eliminate drug abuse in schools, Humphreys, supra, misuse of dangerous drugs by students themselves, or by the role models to whom students look for guidance, will not be tolerated under any circumstances. In the matter of the Certificate of Barbara Corwick, OAL Docket No. EDE 3562-87, State Board of Examiners

decision (March 24, 1988). Teachers who are trusted with the care and custody of school children must exhibit a degree of self-restraint and controlled behavior rarely requisite to other types of employment. In the Tenure hearing of Jacque L. Sammons, 1972 S.L.D. 302.

In this matter, Mr. Kozic was convicted of possessing and growing more than 400 marijuana plants. Rather than serving as a role model, his conduct brought dishonor to the teaching profession. Teachers who instruct students on the importance of abstaining from the use of illegal substances find their lessons undermined by the actions of a member of the profession who is convicted of a drug offense. A teacher with a drug conviction makes the job of other teachers more difficult. Moreover, such conduct impairs the confidence of the public in the teaching profession. Mr. Kozic's drug use harmed not only him, but also all other dedicated teachers. For that reason, his conviction constitutes conduct unbecoming a teacher.

It is, therefore, further ORDERED that, the State Board of Examiners having reviewed the charges and having found that said charges warrant revocation of Edward Kozic's licenses, Mr Kozic's Teacher of Industrial Arts and Teacher Coordinator of Cooperative Industrial Education licenses are hereby revoked on this 9th day of October, 1997.

It is further ORDERED that Edward Kozic return his licenses to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500 Trenton, NJ 08625-050 within fourteen (14) days of receipt of this letter.

Secretary
State Board of Examiners

Date of Mailing: November 21, 1997

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

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