

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE LICENSE OF : STATE BOARD OF EXAMINERS
ANNETTE DILLIHAY : ORDER OF REVOCATION
_____ : DOCKET NO. 432-01/97-137

At its meeting of January 23, 1997, the State Board of Examiners reviewed information provided by the Office of Criminal History Review pursuant to N.J.S.A. 18A:6-7.3, indicating that Annette Dillihay was convicted in June and August of 1988 for possession of marijuana and in October of 1988 for possession of narcotic equipment. Ms. Dillihay was disqualified from service in any institution under the supervision of the Department of Education pursuant to N.J.S.A. 18A:6-7.1 *et seq.* The Commissioner of Education denied her appeal of the disqualification. Additionally, Ms. Dillihay indicated on her county substitute application that she did not have a criminal conviction. Ms. Dillihay currently holds a county substitute license issued by the Atlantic County Office of Education.

At that meeting the State Board of Examiners voted that her convictions constituted sufficient grounds for issuing an Order to Show Cause. Ms. Dillihay was mailed the Order to Show Cause by regular and certified mail on or about February 14, 1997. The Order provided that, if Ms. Dillihay desired to file an Answer to the Order, such Answer must be filed within twenty (20) days. On October 15, 1997 an Answer to the Order to Show Cause was received from Ms. Dillihay.

Ms. Dillihay's Answer to the Order to Show Cause admits her criminal history, but contends she did not intend to conceal it on her application for licensure. She admits there were convictions against her on June 29, 1988, August 1, 1988 and October 28, 1988. She admits also that she was put on probation for three years during which time she failed to be consistent in

paying the fine stipulated by the court. She further admits that she was cited thereafter for non-payment of the fine and for missing five reporting days of probation. She was sentenced for these infractions to serving thirty days in the county jail, with her probation extended two years with the same court stipulations. Thus, she submits, her later violations had nothing to do with drugs. Rather, she avers, she did not have the resources to be consistent in the payment of the fines because she was unemployed and living on a fixed income. She claims before the dates of her arrests she had never been in trouble, nor since those incidents.

Ms. Dillihay indicates that the amount of marijuana, less than 25 grams, was a mere residue of marijuana, and that she was never a smoker of the substance. She submits that approximately ten years have passed since the three occurrences, and she thus submits that the three episodes were isolated. She claims she has become rehabilitated through an outpatient drug treatment program, and submits that she will again appeal her disqualification. She claims her failure to mention her criminal history on her application for licensure was an oversight and that it was completely unintentional. She concludes by stating she is now a law abiding citizen, who has been gainfully employed for ten years, and that this black period in her life is now in the past.

Pursuant to N.J.A.C. 6:11-3.6(a)1, on December 11, 1997, it appearing that no material facts were in dispute, a hearing notice was mailed by regular and certified mail to Ms. Dillihay. On January 5, 1998 she forwarded a response. Her response to the hearing notice repeats the arguments that she submitted in response to the Order to Show Cause. In addition, Ms. Dillihay adds that she believes her current conduct is exemplary and fitting an educator. She submits that if given the opportunity, she will display continued growth, attitude and conduct that is becoming an educator.

At its meeting of February 26, 1998, the State Board of Examiners reviewed the charges against Respondent as well as her Answer to the Order to Show Cause and her response to the hearing notice. After review of those replies, the State Board of Examiners determined that no material facts related to Respondent's drug offenses were in contest. Respondent does not deny that she was disqualified from employment in the public schools of this State as a result of her convictions for illegal drug use. The matter could, therefore, proceed to a determination as to whether her disqualification, based on drug-related offenses, warrants suspension or revocation of her licensure pursuant to N.J.A.C. 6:11-3.6(a)1.

The State Board of Examiners first noted that the instant hearing is not one that considers evidence of rehabilitation. See, 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. Therein, 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 4)

Hence, the State Board of Examiners did not consider Respondent's statements concerning her alleged rehabilitation or how long she has been drug free, but instead focused on assessing whether her disqualification warrants action against her licensure.

Respondent, however, was offered the opportunity to show rehabilitation. N.J.S.A. 18A:6-7.1 has a provision for proving to the Commissioner of Education by clear and convincing

evidence that an individual who is barred from employment in the public schools as a result of a disqualifying offense is rehabilitated and thus is a suitable candidate for employment. Plainly, Respondent was unable to demonstrate to the Commissioner's satisfaction that she was rehabilitated insofar as her appeal was denied.

In enacting N.J.S.A. 18A:6-7.1 *et seq*, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger to them. It therefore barred from employment in schools those individuals convicted of a drug offense. This strong policy statement, that unrehabilitated drug offenders are precluded from any 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, the Commissioner 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. 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).

Accordingly, in light of this State's strong policy opposing the use of illegal drugs, the State Board of Examiners finds Respondent's disqualification, predicated on multiple drug convictions, conduct warranting action against her license. The State Board of Examiners further finds Ms. Dillihay's failure to disclose her criminal history in applying for licensure a second basis for acting against her license. The Board finds her statement that she had no reason to hide her criminal history blatantly dishonest, and thus, also worthy of sanction.

In light of the record of this matter, the State Board finds the appropriate penalty for Annette Dillihay's disqualification and dishonest misrepresentation of her criminal history is the revocation of her county substitute license. It is, therefore, ORDERED that Annette Dillihay's County Substitute license hereby be revoked on this 26th day of February, 1998.

It is further ORDERED that Annette Dillihay return her license to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-05003 within fourteen (14) days of receipt of this letter.

Secretary
State Board of Examiners

Date of Mailing: March 25, 1998

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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