

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JAMES DAMIANO : ORDER OF REVOCATION
_____ : DOCKET NO: 540-11/99-226

At its meeting of November 4, 1999, the State Board of Examiners reviewed information forwarded by the Office of Criminal History Review regarding James Damiano. In June 1999, Damiano pled guilty to conspiracy to violate the gambling laws, promoting gambling and possession with intent to distribute a controlled dangerous substance contrary to the provisions of N.J.S.A. 2C:5-2, 2C:37-2a & 2b(1) and 2C:35-5b, respectively. As a result of such conviction, Damiano was disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et seq. Damiano did not challenge the accuracy of the criminal record before the Commissioner of Education. Upon review of the above information, at that meeting the State Board of Examiners voted to issue Damiano an Order to Show Cause. Damiano currently holds a Teacher of the Handicapped certificate.

The Order to Show Cause was mailed to Respondent by regular and certified mail on January 13, 2000. The Order provided that an Answer to the Order must be filed within twenty (20) days. Damiano filed his response on January 31, 2000. In that Answer, Damiano admitted that he had pled guilty to the charges alleged. (Answer, ¶¶ 2-3). He added that his guilty plea was an attempt to protect his ill father, a co-defendant, from a lengthy trial. (Answer, ¶ 6). He also stated that his local Board attorney told him that pleading guilty to third degree offenses would not affect his ability to teach. (Answer, ¶ 4).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on March 15, 2000, a hearing notice was mailed by regular and certified mail to Damiano. The notice explained that, since it appeared no

material facts were in dispute regarding his offense, respondent had the opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his disqualifying offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

On April 3, 2000, Damiano responded to the hearing notice. That response consisted mainly of reference letters and teaching evaluations. (Hearing Notice Response, p. 1). In addition, Damiano reiterated his devotion to teaching and his desire to continue in the profession. (Hearing Notice Response, p. 1).

At its meeting of May 11, 2000, the State Board of Examiners reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After review of the response, the Board of Examiners determined that no material facts related to respondent's offense were in dispute since Damiano admitted that he had pled guilty to the offenses mentioned in the Order to Show Cause.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Damiano's conviction for several gambling offenses and possession of a controlled dangerous substance and his subsequent disqualification constitute conduct unbecoming a teaching staff member and gives the Board just cause to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that they do.

In enacting the Criminal History Review statute, N.J.S.A. 6-7.1 et seq. in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger to them. In 1989 the Legislature specifically amended the statute to include all

convictions concerning controlled dangerous substances as disqualifying offenses. See, N.J.S.A. 18A:6-7.1b. This amendment was a clear recognition on the part of the Legislature that individuals with such drug convictions should not be permitted to be in contact with school-aged children. The consistent and long-standing policy of this State is to eliminate the use of illegal drugs. See, In the Matter of the Tenure Hearing of David Earl Humphreys, 1978 S.L.D. 689. To that end, the State and the schools herein have engaged in extensive educational efforts to warn the citizenry of the perils of illicit drugs. See, In the Matter of the Certificate of Barbara Corwick, OAL Dkt. No. EDE 3562-87, State Board of Examiners Decision (March 24, 1988). Those who violate this deep-rooted policy, *whether by the use of drugs or their manufacture and distribution*, endanger the public welfare; they cannot be entrusted with the responsibility of caring for school aged pupils. Accordingly, the State Board of Examiners finds that Damiano's disqualification from service in the public schools of this State because of his conviction for possession of a controlled dangerous substance provides just cause to take action against his certificate. In addition, although Damiano's gambling offenses are not disqualifying, they are indicative that he was not a law-abiding role model who should be in a classroom.

That strong policy statement on the part of the Legislature set forth in N.J.S.A. 18A:6-7.1b also offers guidance to the State Board of Examiners as to the appropriate sanction in this matter. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the license that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. Because the Legislature considers Damiano's offense so significant, the State Board of Examiners in this matter believes that the appropriate sanction for his disqualification is the revocation of his certificate to teach.

Accordingly, it is therefore ORDERED that James Damiano's Teacher of the Handicapped certificate be revoked on this 11th day of May 2000. It is further ORDERED that Damiano return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing:

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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