

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
ROBERT G. MORTON : ORDER OF REVOCATION
_____ : DOCKET NO: 588-11/00-258

At its meeting of November 2, 2000, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Robert G. Morton from his tenured position with the Board of Education of Camden for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Robert G. Morton, Dkt. No. 596-12/96 (June 11, 1999). Morton currently holds a Teacher of Industrial Arts certificate.

This case originated when the Camden Board of Education certified tenure charges against respondent, Robert G. Morton. The district had filed tenure charges alleging that Morton's conviction on drug-related criminal charges was conduct unbecoming a teacher.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Chief Administrative Law Judge (ALJ) Barbara Harned heard testimony on several days in September and December 1997. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on June 11, 1999.

In that decision ALJ Harned found that Morton had been arrested on May 11, 1995 because he had an outstanding arrest warrant for a traffic violation. When Morton was searched at police headquarters, the police found two, sealed, glassine bags that

contained a substance that tested positive for crack cocaine. (Initial Decision, slip op. at 26). Morton claimed that he had taken the bags from students at his school and he had forgotten that the bags were in his pocket. The ALJ further found that Morton had received a conditional discharge of the possession charge and that the charge was dismissed on March 10, 1997 when the conditional discharge was completed. (Initial Decision, slip op. at 28.) Morton was again arrested on July 11, 1996 for possession of a controlled dangerous substance when police officers found drugs and drug paraphernalia in his home; Morton's son had called the officers there. Morton pled guilty to a lesser charge and was placed on probation for three years and ordered to pay fines totaling \$1310. (Initial Decision, slip op. at 28.) The district suspended Morton in August 1996 because of the pending drug charges. (Initial Decision, slip op. at 28.)

After considering all the testimony, Chief ALJ Harned found that Morton's conduct was unbecoming a teaching staff member. The Chief Judge found that it was irrelevant that Morton's drug possession occurred off school premises since "the possession, in and of itself, constitutes unbecoming conduct." (Initial decision, slip op. at 35.) She also found that Morton did not present any mitigating circumstances. Further, she found that Morton's testimony as to his two drug arrests was not credible. (Initial Decision, slip op. at 36). Thus, based on her review of the entire record, the ALJ concluded that Morton's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 36). Consequently, Chief ALJ Harned ordered Morton dismissed from his tenured employment.

In a decision dated July 30, 1999, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Morton. The Commissioner

agreed with the ALJ that the local board had proven its case against Morton with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 44). Accordingly, the Commissioner affirmed Morton's removal from his tenured employment with the Camden Board of Education and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Morton's certificate.

Thereafter, on November 2, 2000, the State Board of Examiners issued an Order to Show Cause to Morton as to why his certificates should not be or suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board mailed the Order to Show Cause to Morton by regular and certified mail on January 22, 2001. The Order provided that an Answer to the Order must be filed within 20 days. Morton filed an Answer on February 7, 2001. In his Answer Morton admitted that the district had brought tenure charges against him. He also stated that he was dismissed from his tenured position as a result of the unbecoming conduct proven in the tenure proceeding. (Answer, ¶ 5). In the remainder of his Answer, Morton denied that the State Board of Examiners had a sufficient basis to consider the suspension or revocation of his teaching certificate. He also argued that there were mitigating factors as to why his certificate should not be revoked or suspended including the fact that his alleged offenses did not occur on school property and had nothing to do with school related functions. Morton added that while employed in public education he always performed his duties in a satisfactory manner.

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on March 8, 2001, a hearing notice was mailed by regular and certified mail to Morton. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, respondent was offered an 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 her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her offense warranted action against her certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Morton responded to the Hearing Notice on April 3, 2001. In that response, he argued that the revocation of a teaching certificate could not be based on the outcome of a tenure hearing alone. (Hearing Response, p. 2.). He also stated that the only charge to which he pled guilty or was convicted of “concerned the possession of drug paraphernalia, a misdemeanor which did not by statute require the forfeiture of his position.” (Hearing Response, p.3.) Morton argued that under these circumstances, revocation was an extreme penalty and could not be supported.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Morton’s conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 10, 2001, the State Board of Examiners reviewed the charges and papers Morton filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Morton’s offense were in dispute since he admitted that he had lost his tenured position as a result of the proven tenure charges against him. Thus,

Morton has not denied the charges in the Order to Show Cause. Accordingly, his actions in possessing drug paraphernalia and the loss of tenure which therefore resulted constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Morton's offense as set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners 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. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), *aff'd*. 131 N.J.L. 326 (E & A 1944). "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." Tenure of Sammons, 1972 S.L.D. 302, 321. There can be no dispute that Morton's drug offense, even if it is only for possession of drug related paraphernalia, negates any claim that he can have to being a role model for children. This is conduct unbecoming at its clearest.

Moreover, since Morton has already lost his tenure, if he were to seek a position in another district, he would have to be fingerprinted pursuant to N.J.S.A. 18A:6-7.1 et seq. 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.

That strong policy statement on the part of the Legislature set forth in N.J.S.A. 18A:6-7.1b also guides the State Board of Examiners when it imposes a sanction in such matters. 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 these offenses so significant, the State Board of Examiners believes that the appropriate sanction in such cases is the revocation of the individual's certificate to teach.

In this case we note that Morton has not yet been disqualified from teaching, nor is disqualification a basis of the penalty to be imposed here. However, once he is

fingerprinted, the results are inevitable. Thus, the only proper response to Morton's breach is revocation.

Accordingly, it is therefore ORDERED that Robert G. Morton's Teacher of Industrial Arts certificate be revoked on this 10th day of May 2001. It is further ORDERED that Morton return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Acting Secretary
State Board of Examiners

Date of Mailing: March 22, 2002

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

JD:MZ:kb:Robert G. Morton