

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JAMES O'DONNELL : ORDER OF REVOCATION
_____ : DOCKET NO: 0304-255

At its meeting of May 6, 2004, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that respondent James O'Donnell was convicted in 1997 of felony criminal attempt, aggravated assault. As a result of such conviction, O'Donnell was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* O'Donnell currently holds a Secondary School Teacher of Physical Education certificate, issued in December 1967.

O'Donnell did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the State Board of Examiners voted to issue O'Donnell an Order to Show Cause at its meeting of May 6, 2004.

The Board sent O'Donnell the Order to Show Cause by regular and certified mail on July 1, 2004. The Order provided that O'Donnell must file an Answer within 30 days. O'Donnell filed an Answer on July 12, 2004.

In his Answer, O'Donnell asserted that his disqualification was not mandatory. (Answer, ¶ 3.) He also admitted that he had pled guilty to aggravated assault and had completed his probation and paid all fines. (Answer, ¶4.) O'Donnell noted that his record had remained blemish-free since this incident and claimed that the incident occurred when he was attempting to protect his son from his ex-wife. (Answer, ¶ 4.) O'Donnell also stated that he was awarded custody of his son. (Answer, ¶ 4.)

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on August 13, 2004, the Board sent O'Donnell a hearing notice by regular and certified mail. The notice explained that since it

appeared no material facts were in dispute, O'Donnell 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 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. O'Donnell did not file a response although the certified mail return receipt card had been signed and returned.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether O'Donnell's disqualifying offense constitutes conduct unbecoming a certificate holder. Since O'Donnell failed to respond to the hearing notice, the State Board of Examiners considered his Answer as the only responsive pleading in the hearing process.

At its meeting of December 9, 2004, the State Board of Examiners reviewed the charges and papers O'Donnell filed in response to the Order to Show Cause. After review of the response, the Board of Examiners determined that no material facts related to O'Donnell's offense were in dispute since he never denied that he had committed the offense nor did he deny that he had been disqualified because of it. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*.

The State Board of Examiners must now determine whether O'Donnell's disqualification, which was predicated on the same offense as was set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to *N.J.A.C. 6A:9-17.5*. It finds that it does.

In enacting the Criminal History Review statute, *N.J.S.A.* 18A: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. Individuals convicted of a crime of violence fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing condemnation of acts of violence by teaching-staff members. "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.

In this case, O'Donnel has a conviction for a violent crime. A teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain his/her certificate. *In re Grossman*, 127 *N.J. Super.* 13, 30 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E&A 1944). Unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Accordingly, the State Board of Examiners finds that O'Donnel's disqualification from service in the public schools of this State because of his conviction for felony criminal attempt, aggravated assault provides just cause to take action against his certificate.

That strong policy statement on the part of the Legislature set forth in *N.J.S.A.* 18A:6-7.1(b) 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 certificate 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. Thus, because the Legislature considers O'Donnel's offenses so

significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of O'Donnel's teaching certificate.

Moreover, notwithstanding O'Donnel's contentions of rehabilitation, this is not the proper context for such considerations. The purpose of this proceeding is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation." See *In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners*, 96 N.J.A.R. 2D (EDE) 1, 16 *aff'd*, App. Div. Dkt. No. A-1246-96T5 (September 9, 1997) citing *In the Matter of the Revocation of the Teaching Certificate of James Noll*, State Bd. of Examiners decision (February 7, 1990).

Accordingly, it is therefore ORDERED that James O'Donnel's Secondary School Teacher of Physical Education certificate be revoked on this 9th day of December 2004. It is further ORDERED that O'Donnel return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

Michael K. Klavon, Acting Secretary
State Board of Examiners

Date of Mailing: FEBRUARY 7, 2005

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