

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS  
MARY ELLEN BERBENICH : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0304-240

At its meeting of May 6, 2004, the State Board of Examiners reviewed information received from the Division of Criminal Justice indicating that Mary Ellen Berbenich pled guilty to possession of a controlled dangerous substance in August 2003. As a result of that conviction, on December 19, 2003, Berbenich was sentenced to two years' probation and ordered to serve 45 days in a correctional facility to be satisfied by participation in the Sheriff's Labor Assistance Program. The court also fined Berbenich and ordered her to undergo random drug testing, submit a DNA sample at her expense and obtain/maintain gainful employment. Berbenich also lost her driving privileges for two years. Upon review of this information, at its May 6, 2004, meeting, the State Board of Examiners voted to issue Berbenich an Order to Show Cause. Berbenich currently holds a Teacher of the Handicapped certificate.

The Board sent Berbenich the Order to Show Cause by regular and certified mail on July 1, 2004. The Order provided that Berbenich had 30 days within which to file an Answer. Berbenich filed her Answer on August 20, 2004. In that Answer, Berbenich stated that the case was on appeal and that she would advise the Board of Examiners "on the case as it happens." (Answer, ¶ 1.) The Board of Examiners deemed Berbenich's Answer as a request to hold her case in abeyance pending the outcome of the criminal appeal.

At its meeting on December 9, 2004, the Board of Examiners denied Berbenich's request. Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on December 10, 2004, the Board sent Berbenich a hearing notice by regular and certified mail. The notice explained that since it appeared no material facts were in dispute regarding her conviction, Berbenich 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 conduct warranted action against her certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Berbenich did not respond to the hearing notice.

At its meeting of February 24, 2005, the State Board of Examiners reviewed the charges and papers Berbenich filed in response to the Order to Show Cause. Since Berbenich failed to respond to the hearing notice, the State Board of Examiners considered her Answer as the only responsive pleading in the hearing process. After review of that response, the Board of Examiners determined that no material facts related to Berbenich's offense were in dispute.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Berbenich's conviction for possession of a controlled dangerous substance constitutes conduct unbecoming a teaching staff member and gives the Board just cause to act against her certificate pursuant to *N.J.A.C. 6A:9-17.5*. In her Answer, Berbenich did not deny the charges, but only indicated that her criminal conviction was on appeal. (Answer, ¶ 1.) Thus, Berbenich admits that she committed the conduct cited within the Examiners' Order to Show Cause.

School law cases have traditionally recognized the right of the State Board of Examiners to revoke certificates 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-3527-81T3) (November 18, 1983); *State Board of Examiners v. Krupp*, 3 *N.J.A.R.* 285 (1981). 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 here have engaged in extensive educational efforts to warn the citizenry of the perils of illicit drugs. Thus, the misuse of drugs by students, or by the role models to whom students look to for guidance, will not be tolerated under any circumstance. *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, in light of this State's strong policy opposing the use of illegal drugs, the State Board of Examiners finds Berbenich's conviction for possession of a controlled dangerous substance conduct unbecoming a certificate holder. That conduct also provides just cause to take action against her certificate. The Board determines that the appropriate penalty here is the revocation of that certificate.

Accordingly, it is therefore ORDERED that Mary Ellen Berbenich's Teacher of the Handicapped certificate be revoked on this 24th day of February 2005. It is further ORDERED that Berbenich return her certificate to the Secretary of the State Board of Examiners, Office of Licensure and Credentials, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

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Michael K. Klavon, Acting Secretary  
State Board of Examiners

Date of Mailing: MARCH 22, 2005

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