

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
DANIEL McHARRIS : ORDER OF SUSPENSION
_____ : DOCKET NO: 0506-106

At its meeting of June 8, 2006, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that respondent Daniel McHarris was arrested and charged with a sex offense: filming acts without consent. As a result of this arrest, McHarris faced potential disqualification from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* McHarris currently holds a Teacher of Health and Physical Education Certificate of Eligibility, issued in March 1995, and a Teacher of Health and Physical Education certificate, issued in June 1997.

McHarris 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 McHarris an Order to Show Cause at its meeting of June 8, 2006. On July 20, 2006, the Board formally adopted its written Order to Show Cause.

The Board sent McHarris the Order to Show Cause by regular and certified mail on July 26, 2006. The Order provided that McHarris must file an Answer within 30 days. McHarris' attorney responded on August 20, 2006. In that Answer, he stated that he was "without sufficient information to admit or deny the allegations" of the Order to Show Cause. (Answer, ¶¶ 2-4).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on September 8, 2006, the Board sent McHarris' attorney a hearing notice by regular and certified mail. The notice explained that since it appeared no material facts were in dispute, he 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 McHarris and the legal arguments tendered in his defense, the State Board of

Examiners would determine if the disqualifying offense warranted action against McHarris' certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

McHarris' attorney requested and was granted a brief extension to file his reply. When the Board did not receive a response, it sent him another hearing notice on November 28, 2006, imposing a reply deadline of December 11, 2006. The attorney again did not respond. At its meeting of January 18, 2007, the Board voted to table the matter and send the Hearing Notice directly to McHarris. The notice was sent to McHarris on January 24, 2007, by regular and certified mail. The regular mail copy was not returned and the certified copy was returned as unclaimed. McHarris did not respond to the hearing notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether McHarris' disqualifying offense constitutes conduct unbecoming a certificate holder. Since McHarris did not 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 March 29, 2007, the State Board of Examiners reviewed the charges and papers McHarris 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 McHarris' offense were in dispute since he had never denied that he had been charged with the offense nor did he deny the resulting potential disqualification in the event of a conviction. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*.

The issue before the State Board of Examiners in this matter, therefore, is whether McHarris' arrest and possible resultant disqualification for the sex offense of filming acts without consent, as set forth in the Order to Show Cause, represent just cause to act against his certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that they do.

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 sex offense fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers should serve as role models for their students. "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, McHarris has an arrest for a sex offense-filming acts without consent. A teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain his 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 McHarris' potential disqualification from service in the public schools of this State because of his arrest for sexual offense-filming acts without consent provides just cause to take action against his certificates.

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 would be barred from service in public schools if convicted of that offense, should not be permitted to retain the license that authorizes such service while the courts determine his or her culpability. Thus, because the Legislature considers McHarris' offense so significant, the State Board of Examiners in this matter believes that the appropriate sanction pending resolution of the criminal charges against him is the suspension of his certificates to teach.

Accordingly, on March 29, 2007, the Board of Examiners voted to suspend McHarris' certificates pending resolution of the criminal charges against him. On this 3rd day of May 2007, the Board formally adopted its written decision to suspend and it is therefore ORDERED that Daniel McHarris' Teacher of Health and Physical Education Certificate of Eligibility and Teacher of Health and Physical Education certificate be suspended effective this day. If the charges are resolved in his favor, he shall notify the Board of Examiners for appropriate action regarding the suspension order. It is further ORDERED that McHarris return his certificates to the Secretary of the State Board of Examiners, Office of Licensure and Credentials, PO Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: MAY 7 , 2007

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