

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
MICHAEL FESTA : ORDER OF REVOCATION
_____ : DOCKET NO: 0607-185

At its meeting of February 22, 2007, the State Board of Examiners reviewed information the Office of Criminal History Review had forwarded indicating that Michael Festa was convicted in June 1973 on charges of possession of marijuana. As a result of such conviction, Festa was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Festa did not challenge the disqualification before the Commissioner of Education. Festa currently holds a Teacher of Health and Physical Education certificate, issued in July 1973 and a Teacher of Biological Science certificate, issued in June 1975. Upon review of the above information, at its March 29, 2007 meeting, the State Board of Examiners voted to issue Festa an Order to Show Cause.

The Board sent Festa the Order to Show Cause by regular and certified mail on April 3, 2007. The Order provided that Festa must file an Answer within 30 days. Festa responded on May 25, 2007. In that Answer, Festa admitted that he was disqualified from public employment. (Answer, ¶ 3.) He claimed that his previous teaching experience as well as his 25 years of service as a firefighter superseded his criminal history. (Answer, ¶ 5.) He also questioned why he should be disqualified for an offense that occurred over 35 years ago and why he was allowed to teach from 1975 until 1980. (Answer, ¶¶ 6, 7.) Festa asked to be allowed to continue working as a substitute teacher. (Answer, ¶ 7.) In addition to his Answer, Festa submitted several letters of character reference.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on June 15, 2007, a hearing notice was mailed by regular and certified mail to Festa. The notice explained that since it appeared no material facts were in dispute regarding his offense, 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 him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his disqualifying offense warranted action against his certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Festa filed a copy of his Answer again in response to the Hearing Notice. On October 5, 2007, the Board sent Festa correspondence allowing him the opportunity to appear before the Board and/or submit documentation to present testimony regarding the penalty phase of his hearing. Festa did not respond.

At its meeting of November 1, 2007, the State Board of Examiners reviewed the charges and papers Festa 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 Festa'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 and the charges are deemed admitted. *N.J.A.C. 6A:9-17.7(h)*.

The issue before the State Board of Examiners in this matter, therefore, is whether Festa'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 certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board 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. 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:6-7.1(b).* 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 its schools 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 Festa's disqualification from service in the public schools of this State because of his conviction for possession of marijuana 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 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 Festa'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 certificates to teach. *See In the Matter of the Revocation of the Teaching Certificate of Patricia Rector*, Agency Dkt. No. 19-02 (St. Bd. of Education, August 7, 2002) (affirming the decision of the State Board of Examiners to revoke Rector's teaching certificate on the basis of the disqualification pursuant to *N.J.S.A. 18A:6-7.1*.)

Accordingly, on November 1, 2007 the Board of Examiners voted to revoke Festa's Teacher of Health and Physical Education and Teacher of Biological Science certificates. On this 21st day of February 2008 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Michael Festa's certificates be effective immediately. It is further ORDERED that Festa return his certificates to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing: FEBRUARY 27, 2008

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