

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
ROBERT ROSENBERG : ORDER OF REVOCATION
_____ : DOCKET NO: 0809-167

At its meeting of February 23, 2009, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that respondent Robert Rosenberg was convicted in October 2008 of lewdness. As a result of such conviction, Rosenberg was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Rosenberg currently holds a Teacher of Physical Education certificate, issued in August 1978, and a Teacher of Elementary School certificate, issued in March 1979.

Rosenberg 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 Rosenberg an Order to Show Cause at its meeting of March 31, 2009.

The Board sent Rosenberg the Order to Show Cause by regular and certified mail on April 1, 2009. The certified mail receipt was signed and returned. The regular mail copy was not returned. The Order provided that Rosenberg must file an Answer within 30 days. Rosenberg did not file a response. Thereafter, on June 11, 2009, the Board sent Rosenberg another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. Neither copy was returned. Rosenberg did not respond to the second notice either.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on July 30, 2009, the Board sent Rosenberg a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Rosenberg 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. Once again, neither copy was returned nor did Rosenberg file a response.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Rosenberg's conviction and subsequent disqualification constitute conduct unbecoming a certificate holder. Since Rosenberg failed to respond to the Order to Show Cause or the hearing notice, at its meeting of October 22, 2009, the State Board of Examiners considered only the allegations in the Order to Show Cause. The Board of Examiners determined that no material facts related to Rosenberg's offense were in dispute since he never denied that he had pled guilty to the offense charged. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The State Board of Examiners must now determine whether the conduct underlying Rosenberg's conviction and resulting disqualification, as 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*. 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 crime of sexual misconduct fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must 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, Rosenberg has been convicted of lewdness. A teacher’s behavior outside the classroom may be relevant in determining that person’s qualifications and continued fitness to retain her certification. *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 Rosenberg’s disqualification from service in the public schools of this State because of his conviction for Lewdness 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 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 herself out as a teacher. Thus, because the Legislature considers Rosenberg’s offense so significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of his teaching certificates.

Accordingly, on October 22, 2009, the Board of Examiners voted to revoke Robert Rosenberg’s Teacher of Physical Education and Teacher of Elementary School certificates. On this 2nd day of December 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Rosenberg’s certificates be

effective immediately. It is further ORDERED that Rosenberg 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:

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.

RRH:MZ: