

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
ANTHONY FRANCO : ORDER OF REVOCATION
_____ : DOCKET NO: 0506-201

On November 2, 2005, the Cherry Hill School District provided the State Board of Examiners with information that Anthony Franco had plead guilty to 1st Degree Indecent Exposure in Delaware. Franco currently holds a Teacher of Social Studies Certificate of Eligibility, issued in June 2004. At its meeting of March 30, 2006, the Board issued an Order to Show Cause to Franco as to why his certificate should not be revoked or suspended on the basis of that guilty plea. Franco filed an Answer to the Order in which he indicated that he had never plead guilty to 1st Degree Indecent Exposure, and he submitted an Order of the Family Court of the State of Delaware showing that he had plead guilty to 2nd Degree Indecent Exposure, an unclassified misdemeanor which is not a sex offense under Delaware law. (Answer, ¶¶ 3, 4.) The Delaware Family Court provided the Board with confirmation that Franco had plead guilty to 2nd Degree Indecent Exposure. Under Delaware law, “[a] male is guilty of indecent exposure in the second degree if he exposes his genitals or buttocks under circumstances in which he knows his conduct is likely to cause affront or alarm to another person.” 11 Del. C. §764.

At its meeting of May 1, 2008, the Board voted to table this matter in order to obtain additional information from Franco regarding his crime. By letter dated May 7, 2008, which was sent by regular and certified mail, the Board directed Franco to provide information regarding the specific conduct which led to his arrest and guilty plea. Franco had until May 30, 2008 to provide such information. Franco did not respond to that letter. The certified mail was returned marked “refused,” but the regular mail was not returned.

In July 2008, the Office of Criminal History Review provided information to the Board indicating that Franco was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* because of his conviction for 2nd Degree Indecent Exposure. Franco 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 Franco an Amended Order to Show Cause at its meeting of September 11, 2008.

The Board sent Franco the Amended Order to Show Cause by regular and certified mail on October 17, 2008. The certified mail copy was returned as unclaimed. The regular mail copy was not returned. The Order provided that Franco must file an Answer within 30 days. Franco did not respond to the Amended Order to Show Cause. Thereafter, on January 7, 2009, the Board sent Franco a second notice by regular and certified mail providing him an additional 15 days in which to file an Answer. The certified mail copy was returned as unclaimed. The regular mail copy was not returned. Once again, Franco did not file an Answer.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on February 3, 2009, the Board sent Franco a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute and Franco 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 whether the conduct underlying his conviction and resulting disqualification warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Franco was also provided the opportunity to appear before the

Board and testify on the sanction issue. The regular mail copy was not returned and the certified mail copy was returned as unclaimed. Franco did not file a response.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Franco's disqualifying offense constitutes conduct unbecoming a certificate holder. Since Franco failed to respond to the Amended Order to Show Cause or the hearing notice, at its meeting of May 11, 2009, the State Board of Examiners considered only the allegations in the Amended Order to Show Cause. The Board of Examiners determined that no material facts related to Franco'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)*. 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 Franco's conviction and resulting disqualification, predicated on the same offense set forth in the Order to Show Cause, represent 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 dangerous. Individuals convicted of a crime involving indecent exposure fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers must serve as role models for 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, Franco has a conviction for an offense that involved exposing his genitals and/or buttocks knowing that his conduct was likely to alarm another person. 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 Franco’s disqualification from service in the public schools of this State because of his conviction for Indecent Exposure 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 Franco’s offense so significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of his teaching certificate.

Accordingly, on May 11, 2009, the Board of Examiners voted to revoke Anthony Franco’s Teacher of Social Studies Certificate of Eligibility. On this 22nd day of June 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that

the revocation of Franco's certificate be effective immediately. It is further ORDERED that Franco return his certificate 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:6-28.

RRH:MZ: