

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JOHN GUARNI : ORDER OF REVOCATION
_____ : DOCKET NO: 0708-188

At its meeting of May 1, 2008, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed John Guarni from his tenured position with the Juvenile Justice Commission (JJC) for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of John Guarni*, Docket No. 299-07 (Commissioner's Decision, July 23, 2007). Guarni currently holds a Teacher of the Handicapped certificate, issued in July 1991.

This case originated on October 20, 2006, when the JJC certified tenure charges against respondent, John Guarni, with the Commissioner of Education. Guarni was employed as a Teacher of the Handicapped. The JJC charged him with unbecoming conduct for allegedly possessing a controlled dangerous substance (CDS) and failing to report his arrest and criminal charge for drug related activity within five days as required by JJC policy.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Jeff Masin heard testimony on May 21, 2007. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on June 5, 2007.

In that decision, ALJ Masin found that on May 31, 2006, the Westville police Department stopped Guarni for an alleged motor vehicle violation. During that stop, the police found heroin in Guarni's car and in the possession of his passenger, John Monroe. (Initial Decision, slip op. at 1-4). Guarni was charged with possession of heroin, but the

indictment was later dropped. (Initial Decision, slip op. at 6.) Guarni testified that he had driven Monroe to Camden and dropped him off at a location Monroe requested. (Initial Decision, slip op. at 10.) Guarni stated that he did not know what Monroe was doing there, but admitted that he had done this with Monroe on three or four previous occasions. (Initial Decision, slip op. at 12.) Guarni claimed that he thought he was taking Monroe to his mother's house, although he acknowledged that he did not drive Monroe to a location that he had driven to before and believed to be Monroe's mother's home. (Initial Decision, slip op. at 11-12.) Guarni claimed he did not look at Monroe's hands when Monroe re-entered the vehicle and disavowed any knowledge of the heroin. (Initial Decision, slip op. at 12.)

After considering all the testimony, ALJ Masin found that although Guarni's criminal charges were dismissed, "there is no doubt that heroin was found both on the person of Guarni's passenger and within the passenger compartment of a vehicle both driven by and registered to Mr. Guarni. Further, it is undisputed that Guarni was the owner of the change purse in which ten bags of heroin were discovered." (Initial Decision, slip op. at 13.) The ALJ therefore determined that the case turned on Guarni's and Monroe's credibility since both claimed Guarni knew nothing about the heroin until it was found by police. (Initial Decision, slip op. at 13.)

ALJ Masin held that Guarni's story was "not believable." (Initial Decision, slip op. at 14). Judge Masin opined that it made no sense for Guarni to drive Monroe to a dangerous area of Camden, drop him off for no apparent reason only to pick him up later without ever asking why, unless Guarni knew the reason. (Initial Decision, slip op. at 14). The ALJ noted that as a teacher who dealt with juvenile delinquents, and was

familiar with Camden, Guarni “could not have been so naïve as not to understand that Monroe was purchasing drugs on these several trips to Mt. Ephraim Avenue.” (Initial Decision, slip op. at 14.) ALJ Masin concluded that, at the very least, Guarni was facilitating Monroe’s drug use, but that the more likely explanation was that Monroe was purchasing the drugs for Guarni “in an inner-city neighborhood where Guarni, a white man, might not have felt safe to do so himself.” (Initial Decision, slip op. at 14-15.) The ALJ therefore found that “the most probable explanation arising from the credible evidence is that Guarni was the knowing possessor of the CDS found in his change purse and under his seat.” (Initial Decision, slip op. at 15.)

In assessing the appropriate penalty, ALJ Masin concluded that Guarni’s conduct was inappropriate for a tenured teacher. (Initial Decision, slip op. at 15.) Moreover, even if the drugs were not Guarni’s, the ALJ stated that Guarni was fully aware of what he was helping Monroe to do: “That he may not himself have possessed the drugs, but merely facilitated Monroe’s purchase of illegal drugs for Monroe’s own use, would hardly limit the damage to Guarni’s ability to defend his status as a tenured teacher. (Initial Decision, slip op. at 16.) The ALJ also found that Guarni had violated the JJC’s policy on Drug Free Workplaces by not reporting his drug arrest within five days. (Initial Decision, slip op. at 16-17.) After examining Guarni’s disciplinary record, which included two written reprimands for neglect of duty, the ALJ concluded that Guarni must be “stripped of his tenure.” (Initial Decision, slip op. at 17).

In a decision dated July 23, 2007, the Commissioner of Education affirmed the ALJ’s Initial Decision as to the tenure charges against Guarni. The Commissioner noted that the record before her “amply established that respondent’s behavior with respect to

the incident surrounding the JJC's tenure charges constitutes conduct unbecoming a teaching staff member." (Commissioner's Decision, slip op. at 1-2). Accordingly, the Commissioner affirmed Guarni's removal from his tenured employment with the JJC and transmitted the matter to the State Board of Examiners for appropriate action regarding Guarni's certificate. (Commissioner's Decision, slip op. at 2.)

Thereafter, on May 1, 2008, the State Board of Examiners issued Guarni an Order to Show Cause as to why his certificate should not be revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Guarni the Order to Show Cause by regular and certified mail on May 14, 2008 and re-sent it on July 21, 2008 after there was a discrepancy regarding Guarni's legal representation. The Order provided that Guarni's Answer was due within 30 days. Guarni filed an Answer on September 12, 2008. In his Answer, Guarni denied that his vehicle was stopped for a traffic violation but rather because he was not wearing a seatbelt. He also stated that he was not in possession of crack cocaine or heroin but unbeknownst to him, his passenger was. (Answer, ¶ 3.) Guarni also denied that he violated the JJC's reporting requirement because he was never charged with anything more than failure to wear a seatbelt until August 30, 2006, when he was charged with possession of a CDS. He noted that he reported his drug charge on September 7, 2006, which was within five working days. (Answer, ¶ 5).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on October 2, 2008, the Board sent Guarni a hearing notice by regular and certified mail. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, Guarni was offered an opportunity to submit written arguments on the issue of whether the conduct

addressed in the Order to Show Cause provided cause for the Board of Examiners to take action against his certificate and, if so, the appropriate sanction. Guarni was also afforded the opportunity to appear before the Board and testify on the sanction issue. Guarni did not respond to the Hearing Notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Guarni's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of March 31, 2009, the State Board of Examiners reviewed the charges and papers Guarni filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Guarni's offense were in dispute since he could not dispute that the JJC had proven the tenure charges against him. Thus, Guarni has not denied the charges in the Order to Show Cause. Accordingly, his actions regarding the purchase and possession of heroin constitute conduct unbecoming a certificate holder. 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 Guarni's offense 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 it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C. 6A:9-17.5*. Furthermore, 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). “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. There can be no dispute that Guarni’s actions in transporting Monroe on several occasions, to purchase illegal drugs, whether they were for Monroe or Guarni, negates any claim Guarni can have to being a role model. As the ALJ noted, Guarni’s claim that he was unaware of what Monroe was doing all those times he brought him to Camden strains credulity. At best, Guarni aided Monroe in engaging in illegal activity. At worst, Guarni was a participant in that illegal activity himself. In either case, the only proper response to Guarni’s breach is revocation.

Accordingly, on March 31, 2009 the Board of Examiners voted to revoke John Guarni’s Teacher of the Handicapped certificate. On this 11th day of May 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Guarni’s certificate be effective immediately. It is further ORDERED that Guarni 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: _____, 200

Appeals may be made to the Commissioner of Education pursuant to the provisions of N.J.S.A. 18A:6-28.
RRH:MZ: