

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
MICHAEL SMITH : ORDER OF REVOCATION
_____ : DOCKET NO: 0910-158

At its meeting of January 7, 2010, the State Board of Examiners reviewed information received from the Passaic County Prosecutor's Office indicating that in September 2002, Michael Smith pled guilty to charges of Criminal Sexual Contact with an 18-year-old student. Smith was accepted into a Pre-trial Intervention (PTI) program. Although the charges were dismissed upon his completion of PTI in October 2005, Smith was required to admit the sexual contact as part of the case. Smith currently holds a Teacher of Physical Education Certificate of Eligibility, issued in July 1997 and a Teacher of Physical Education certificate, issued in December 1998. Upon review of the above information, at its March 25, 2010 meeting, the State Board of Examiners voted to issue Smith an Order to Show Cause.

The Board sent Smith the Order to Show Cause by regular and certified mail on April 8, 2010. The Order provided that Smith's Answer was due within 30 days. Smith submitted a response on April 19, 2010. In that Answer, Smith admitted that he had pled guilty to Criminal Sexual Contact and was admitted into PTI. (Answer, p. 1.) He noted that he had successfully completed PTI in 2005 and that his charges had been expunged. (Answer, p. 1.) He noted that he regretted his actions and had apologized to his victim. (Answer, p. 1.) He stated that he had worked with his church and the Paterson branch of the NAACP, working with at-risk youth. (Answer, p. 1.) In the remainder of his Answer, Smith maintained that he knew how valuable his certificate was and hoped that he would be able to return to the teaching profession. (Answer, p. 1.)

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on April 20, 2010, the Board of Examiners sent Smith a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Smith 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, as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. 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 Smith's offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Smith was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. The certified mail copy was returned as unclaimed. The regular mail copy was not returned. Smith did not respond to the Hearing Notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Smith's admission to Criminal Sexual Contact constitutes conduct unbecoming a certificate holder. At its meeting of July 22, 2010, the State Board of Examiners reviewed the charges and papers Smith filed in response to the Order to Show Cause. The Board of Examiners determined that no material facts related to Smith's offense were in dispute since he did not deny that he had pled guilty and had been sentenced accordingly. 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 Smith's guilty plea, as 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.

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*. "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. Smith's admitted act of Criminal Sexual Contact is inexcusable for any individual, teacher or not. Moreover, the Commissioner has long held that teachers serve as role models for their students. Clearly, Smith cannot claim status as a role model to anyone.

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 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this instance, Smith's admission of Criminal Sexual Contact demonstrates egregious behavior that warrants revocation.

Furthermore, notwithstanding Smith's contentions of rehabilitation, this is not the proper context for such considerations. The purpose of this proceeding is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation." *See In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners*, 96 *N.J.A.R.* 2D (EDE) 1, 16 *aff'd*, App. Div. Dkt. No. A-1246-96T5 (September 9, 1997) citing *In the Matter of the Revocation of the Teaching Certificate of James Noll*, State Bd. of

Examiners decision (February 7, 1990). Thus, the fact that Smith has completed PTI and has done community outreach work with at-risk youth, while a step in the right direction, has no bearing on the decision the Board of Examiners must make with regard to his certification.

Accordingly, on July 22, 2010 the Board of Examiners voted to revoke Smith's Teacher of Physical Education Certificate of Eligibility and his Teacher of Physical Education certificate. On this 16th day of September 2010 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Michael Smith's certificates be effective immediately. It is further ORDERED that Smith 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: