

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
EMMA PAINTER : ORDER OF SUSPENSION
_____ : DOCKET NO: 0910-139

At its meeting of December 13, 2012, the State Board of Examiners (Board) reviewed information regarding Emma Painter. Pursuant to *N.J.A.C. 6A:9-17.4*, the Kingsway Regional School District reported that Painter pled guilty in July 2012 to Obstructing the Administration of Law. Painter had spoken to a student about her statements during an ongoing police investigation into allegations that the student had had an inappropriate relationship with a teacher. On September 11, 2012 Painter was sentenced to one year of probation and community service. Painter currently holds a Teacher of Health and Physical Education certificate, issued in July 1985 and a Teacher of Driver Education certificate, issued in October 1989. Upon review of the above information, at its January 25, 2013 meeting, the Board voted to issue Painter an Order to Show Cause.

The Board sent Painter the Order to Show Cause by regular and certified mail on January 30, 2013. The Order provided that Painter must file an Answer within 30 days. After receiving notification that Painter was appealing her conviction to the New Jersey Superior Court, Appellate Division, the Board placed the Order to Show Cause in abeyance. Upon learning that the Appellate Division had affirmed Painter's conviction, the Board took the matter out of abeyance and Painter filed her Answer on December 3, 2013. In that Answer, Painter admitted to the allegations in the Order to Show Cause. (Answer, ¶¶ 1, 3, 4). She added that the factual underpinning to her plea to Obstructing the Administration of Law was that she met with a State witness during an ongoing investigation and urged the witness to tell the truth based on what Painter believed to be true without proof of what had actually occurred. (Answer, ¶ 3). Painter added that the conversation she had with the witness had nothing to do with her employment as a

teacher or a coach. (Answer, ¶ 3). Painter also denied that there was just cause to revoke her certificates. (Answer, ¶¶ 5-6). In Separate Defenses, Painter claimed that the Order to Show Cause did not set forth a cognizable charge and involved allegations or conduct which, even if improper, did not warrant an Order to Show Cause. (Answer, Separate Defenses ¶¶ 1, 2). She also argued that there were mitigating circumstances which did not warrant revocation and that she had already been disciplined for the alleged conduct in the Order to Show Cause. (Answer, Separate Defenses, ¶¶ 3, 7).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on December 12, 2013, the Board sent Painter a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Painter 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 her certificates. It also explained that upon review of the charges against her and the legal arguments tendered in her defense, the Board would determine if Painter's conduct warranted action against her certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Painter was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Painter submitted a Hearing Response on January 13, 2014.

In her Hearing Response, Painter noted that the issue before the Board was what action, if any, should be taken against her certificates. (Hearing Response, p. 2). Painter argued that since the Court in her criminal case had determined that forfeiture of her public office was not warranted, revocation of her certificates, a more serious penalty, was likewise not warranted. (Hearing Response, p. 3). She reiterated that her offense did not touch on her employment and had no connection to her position as a teacher or coach and involved someone she "knew outside the school context." (Hearing Response, p. 4). Painter argued that she was already facing the

loss of tenure in her district and that revocation of her certificates would constitute an excessive penalty. (Hearing Response, pp. 6-7). In addition to her Hearing Response, Painter requested to appear before the Board.

In testimony before the Board, Painter's counsel argued that revocation was too harsh a penalty since Painter had pled guilty to a fourth degree offense, the offense was not disqualifying and Painter had not had to forfeit her public position. Painter's attorney added that Painter's offense did not involve her role as a teacher; rather, the girl she had spoken to was a family friend and not one of Painter's students. Painter's probation had ended early and she had performed her 150 hours of community service. Her counsel argued that revocation was disproportionate to Painter's crime, that she posed no risk to children and had been employed at Kingsway for 20 years without incident.

Painter testified that she had wanted to be a teacher since 5th grade and had taught for more than 20 years. She noted that the student she spoke to was her friend's niece and that she was checking to see that the student was okay. Painter recalled that the student told her that during a school investigation she had been pressured to change her answers regarding a relationship she had had with a teacher. Painter told the student that she should tell someone if she had said something wrong but that she should tell the truth. Painter said that maybe it was a lapse in judgment to talk to the student. She noted that she had completed her 150 hours of community service by helping to refurbish a church. She stated that she had paid all fines and penalties levied by the court and was involved in charity fundraisers. Painter stated that she was working as a courier but did not want her obituary to read that she was a courier and not a teacher. She stated that she loved her job and loved helping kids. Painter also told the Board that she was remorseful for what had happened.

The threshold issue before the Board in this matter is whether Painter's conviction constitutes conduct unbecoming a certificate holder. At its meeting of April 4, 2014, the Board

considered the allegations in the Order to Show Cause, Painter's Answer, Hearing Response with accompanying submissions and her testimony. The Board determined that no material facts related to Painter's offense were in dispute since she admitted that she had pled guilty and had been sentenced accordingly. Thus, the Board 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 Board must now determine whether Painter's conviction, as set forth in the Order to Show Cause, represent just cause to act against her certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that they do.

The Board 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. In this matter, Painter's conviction for Obstructing the Administration of Law led the court to sentence her to probation and community service. Painter argues that this sentence is punishment enough and the Board should take no action. Yet, contrary to Painter's claim, the fact that the court did not believe her offense warranted the forfeiture of her public position has no bearing on what the appropriate response is here. While the court's role is to determine Painter's criminal culpability and its relationship to the forfeiture of public office, the Board is examining her behavior in the context of conduct unbecoming a teacher.

Moreover, although Painter argues otherwise, it is well established that the Board has the right to revoke a certificate where the teacher was involved in criminal conduct, even if the conduct was unrelated to the classroom. *See Cox v. State Board of Examiners*, (App. Div. Docket No. A-3527-81T3) (November 18, 1983); *State Board of Examiners v. Krupp*, 3 *N.J.A.R.*

285 (1981). Yet here, Painter cannot make the claim that her offense was not school-related. Although the student involved was not taught by Painter, Painter's conversation with her took place on school grounds and the conversation itself revolved around an investigation into the student's involvement with a teacher. Nevertheless, the Board believes that given the totality of circumstances here, and taking into consideration Painter's heretofore 20 year unblemished record, the appropriate sanction in this matter is a two-year suspension of Painter's certificates.

Accordingly, on April 4, 2014, the Board voted to suspend Emma Painter's Teacher of Health and Physical Education and Teacher of Driver Education certificates for a period of two years. On this 22nd day of May 2014 the Board voted to adopt its formal written decision and it is therefore ORDERED that the suspension of Emma Painter's certificates be effective immediately. It is further ORDERED that Painter return her 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 *N.J.S.A.* 18A:6-38.4.