

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
MICHAEL J. DOUGHERTY : ORDER OF REVOCATION
_____ : DOCKET NO: 1516-119

At its meeting of September 17, 2015, the State Board of Examiners (Board) reviewed information received from the Superior Court of New Jersey, Monmouth County and the Criminal History Review Unit (CHRU) regarding Michael J. Dougherty. On February 24, 2015, Dougherty was convicted of Resisting Arrest, Unlawful Possession of a Weapon, Possessing a Weapon for an Unlawful Purpose, Aggravated Assault-Causing Bodily Injury with a Deadly Weapon and Aggravated Assault-Upon a Law Enforcement Officer. On May 8, 2015, he was sentenced to five years' probation and fined. The CHRU notified the Board that, as a result of his conviction, Dougherty was disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Dougherty currently holds a Teacher of Elementary School Certificate of Eligibility, issued in June 2004, a Teacher of Social Studies Certificate of Eligibility, issued in September 2004 and Teacher of Elementary School and Teacher of Social Studies certificates, both issued in April 2008.

Dougherty did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the Board voted at its meeting of October 30, 2015 to issue Dougherty an Order to Show Cause as to why his certificates should not be revoked.

The Board sent Dougherty the Order to Show Cause by regular and certified mail on November 4, 2015. The Order provided that Dougherty must file an Answer within 30 days. Dougherty filed an Answer on November 30, 2015.

In his Answer, Dougherty admitted to his conviction and noted that he served no jail time as a result of the conviction. (Answer, ¶ 3). He added that all charges against him were third degree violations and had he known at the time of trial that his teaching certificates might be in jeopardy he "would have chosen a different course of defense." (Answer, ¶¶ 4, 5). Dougherty noted he would have filed an appeal of the criminal matter if it were financially feasible. (Answer, ¶ 6). He claimed that the

officer at the center of the case was under the heavy use of Vicodin that was not prescribed at the time of Dougherty's arrest. (Answer, ¶ 7). Dougherty added that his trial was delayed for close to three years and that, during that time, he was not in prison and did not need to report to any state entity. (Answer, ¶ 8). Dougherty stated that he was agreeable to a suspension of his certificates with other conditions the Board might impose so that he could retain his certificates and possibly return to teaching in the future. (Answer, ¶ 10). He added that he was a talented, well-respected teacher and hoped that this one incident would not forever bar him from teaching. (Answer, ¶ 10). Dougherty noted that he had an unblemished record as a teacher and consistently received good evaluations. (Answer, ¶ 11). Finally, he noted that he was currently employed by a lawn service provider making significantly less than he would as a teacher and was intent on rebuilding his life and career "after this harrowing incident." (Answer, ¶ 12).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on January 6, 2016, the Board sent Dougherty a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Dougherty 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 found just cause 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 Board would determine if his disqualifying offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Dougherty was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Dougherty responded on February 2, 2016.

In that response, Dougherty stated that, on October 10, 2011, during a routine traffic stop, he was assaulted by the police officer conducting the stop. (Hearing Response, p. 2). He noted that both he and the officer were injured and transported to local hospitals. (Hearing Response, p. 2). Dougherty reiterated that during the three-year delay until trial he was not in jail. (Hearing Response, p. 2). He also acknowledged his conviction and sentence after a jury trial. (Hearing Response, pp. 2-3). Dougherty stated that he maintained his innocence in the matter and would have filed an appeal if he had the

financial means to do so. (Hearing Response, p. 3). He also noted that he would have argued on appeal that the officer would have acted differently had he not been abusing Vicodin. (Hearing Response, p. 3). Dougherty stated that he was acting to defend and protect himself from what he perceived “were acts against his person and his life.” (Hearing Response, p. 4). He argued that his actions did not warrant the revocation of his certificates, given the totality of the circumstances at the time of the crime and his unblemished record prior to and since that day. (Hearing Response, pp. 4-5). In his cover letter attached to his Hearing Response, Dougherty also requested to appear before the Board. (Dougherty Correspondence, February 2, 2016).

In testimony before the Board, Dougherty asked for a reduction in the sanction and noted that a five minute incident changed his life. He argued that the discipline imposed must be proportional and that his actions did not warrant revocation. He reminded the Board of his unblemished record before and after the incident and noted that his crime did not involve lewdness or child pornography. Dougherty noted that he defended himself in unfortunate circumstances and would have appealed if he had had the financial means. He noted that a suspension was more appropriate for his actions and that it took a very long for his case to be heard. He stated that he served no jail time and was in the wrong place at the wrong time.

The threshold issue before the Board in this matter is whether Dougherty’s conviction and subsequent disqualification constitute conduct unbecoming a certificate holder. At its meeting of June 23, 2016, the Board considered the allegations in the Order to Show Cause as well as Dougherty’s Answer, Hearing Response and testimony. The Board determined that no material facts related to Dougherty’s offense were in dispute since he admitted that he had been convicted of the offense charged and been subsequently disqualified. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Dougherty’s conviction and resulting disqualification, as set forth in the Order to Show Cause, represent just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.5*. 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. Individuals convicted of a crime such as Resisting Arrest, Unlawful Possession of a Weapon, Possessing a Weapon for an Unlawful Purpose, Aggravated Assault-Causing Bodily Injury with a Deadly Weapon and Aggravated Assault-Assault Upon a Law Enforcement Officer fall squarely within in this category. The strong legislative policy statement is also 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. Moreover, 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, Dougherty's conviction demonstrates behavior that falls far short of a role model. The fact that he had an unblemished record before and after the incident, while mitigating, does not outweigh or not negate the severity of his conduct.

The 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 Board 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 and the Commissioner consider Dougherty's offense so significant, the Board believes that the only appropriate sanction in this case is the revocation of his certificates.

Accordingly, on June 23, 2016, the Board voted to revoke Michael J. Dougherty's Teacher of Elementary School and Teacher of Social Studies Certificates of Eligibility and his Teacher of Elementary School and Teacher of Social Studies certificates. On this 16th day of September 2016 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Michael Dougherty's certificates be effective immediately. It is further ORDERED that Dougherty return

his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, 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

RRH/MZ/th

Date of Mailing:
via certified and regular mail

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