

SBE #679-01/02-292  
SB # 35-03

IN THE MATTER OF THE REVOCATION :  
OF THE TEACHING CERTIFICATES OF : STATE BOARD OF EDUCATION  
DOUGLAS SCOCCO BY THE STATE : DECISION  
BOARD OF EXAMINERS. :

---

Decided by the State Board of Examiners, December 12, 2002

Referred to the Commissioner of Education by the State Board of  
Education, March 3, 2004

Determination by the Commissioner of Education, March 11, 2004

For the Appellant, Thomas A. Behrendt, Esq.

For the Respondent, Jason Ross, Deputy Attorney General (Peter C.  
Harvey, Attorney General of New Jersey)

On December 15, 2000, the appellant, a teacher employed by the St. Joseph School for the Blind, was convicted of Possession of a Controlled Dangerous Substance. On November 20, 2001, the Office of Criminal History Review in the Department of Education notified the appellant that, as a result of this conviction, he was permanently disqualified from employment in New Jersey's public schools pursuant to N.J.S.A. 18A:6-7.1 et seq. (hereinafter "Disqualification Statute").

On the basis of the appellant's conviction for the disqualifying offense of Possession of a Controlled Dangerous Substance, the State Board of Examiners initiated proceedings to revoke the appellant's certification. However, on April 16, 2002, the appellant's conviction was vacated by order of the Superior Court. As a result, the

original charges were reinstated and the matter returned to the trial calendar. Accordingly, at its meeting on June 13, 2002, the Board of Examiners tabled the revocation proceedings pending resolution of the criminal proceedings.

On July 16, 2002, the appellant notified the Board of Examiners that he had pleaded guilty in June to two counts of Failure to Make Lawful Disposition of a Controlled Dangerous Substance, a disorderly persons offense. The Board of Examiners then resumed its proceedings against the appellant.

On July 30, 2003, the Board of Examiners, finding that no material facts were in dispute, concluded that the appellant's "disqualification from service in the public schools of this State because of his conviction for Failure to make [sic] Lawful Distribution of a CDS provides just cause to take action against his certificates." State Board of Examiners' Decision, at 3. It found that an individual who is barred from employment in New Jersey's public schools should not be permitted to retain the license that authorizes such service and concluded that since the Legislature considered appellant's offense so significant, the appropriate action for his "disqualification" was revocation of his certification.

The appellant filed an appeal to the State Board of Education, and, on March 3, 2004, the State Board reversed the Board of Examiners' decision. As we explained therein:

...the appellant was notified on November 20, 2001 by the Criminal History Records Office acting on behalf of the Commissioner that he was disqualified from employment in the public schools. However, the conviction that was the basis for appellant's disqualification was vacated and there has been no subsequent determination by the Commissioner under the Disqualification Statute that appellant is disqualified [on the basis of his conviction for Failure to Make

Lawful Disposition of a Controlled Dangerous Substance]. Hence, the Board of Examiners could not properly revoke appellant's certification on the grounds that he is permanently disqualified from employment in New Jersey's public schools pursuant to the Disqualification Statute.

Given these circumstances, we find that the appropriate course is to refer this matter to the Commissioner for a determination as to whether appellant is permanently disqualified from employment in the public schools under the Disqualification Statute. We, however, retain jurisdiction.

State Board's Decision, slip op. at 3-4.

Pursuant to that decision, the Criminal History Review Unit issued a notice to the appellant on March 11, 2004 advising him that his conviction for Failure to Make Lawful Disposition of a Controlled Dangerous Substance was a disqualifying offense under N.J.S.A. 18A:6-7.1 et seq. and, as a result, that he was permanently disqualified from school employment. As required by N.J.S.A. 18A:6-7.3, the appellant was provided with 14 days to challenge the accuracy of his criminal history record. Pursuant to the State Board's retention of jurisdiction, the Bureau of Controversies and Disputes transmitted the updated record to the State Board on behalf of the Commissioner.

In a letter dated April 15, 2004, the Director of the State Board Appeals Office advised the parties that the State Board, pursuant to its retention of jurisdiction, would now consider whether the appellant's teaching certificates should be revoked. The parties were provided with the opportunity to submit briefs on the basis of the updated record. Both the appellant and the State Board of Examiners submitted timely supplemental briefs.

After a careful review of the updated record and the parties' supplemental briefs, we find that, as set forth in the March 11, 2004 letter from the Criminal History Review

Unit, the appellant's conviction for Failure to Make Lawful Disposition of a Controlled Dangerous Substance is a disqualifying offense under N.J.S.A. 18A:6-7.1 et seq. and, as a consequence, that he is permanently disqualified from employment in the public schools of New Jersey.

The pertinent provision of N.J.S.A. 18A:6-7.1 provides that an individual is disqualified from school employment if a criminal history record check reveals a conviction for:

b. An offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a "controlled dangerous substance" as defined in the "Comprehensive Drug Reform Act of 1987," N.J. S.2C:35-1 et al. or "drug paraphernalia" as defined pursuant to N.J.S.2C:36-1 et seq.

In this case, the appellant pleaded guilty to Failure to Make Lawful Disposition of a Controlled Dangerous Substance, N.J.S.A. 2C:35-10(c). N.J.S.A. 2C:35-10 provides, in pertinent part:

a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog....

c. Any person who knowingly obtains or possesses a controlled dangerous substance or controlled substance analog in violation of subsection a. of this section and who fails to voluntarily deliver the substance to the nearest law enforcement officer is guilty of a disorderly persons offense....

Given the clear statutory language, we reject as entirely without merit the appellant's contention that a conviction under N.J.S.A. 2C:35-10(c) is not a disqualifying offense under N.J.S.A. 18A:6-7.1. We turn now to the question of whether revocation of

his teaching certification is warranted. In this respect, we stress that revocation is not automatic following disqualification pursuant to N.J.S.A. 18A:6-7.1.

After considering the question, we find that it is not necessary to remand this matter to the State Board of Examiners for further proceedings. In that the State Board of Education is the ultimate administrative decision-maker and fact-finder in school matters, In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), certif. den., 121 N.J. 615 (1990); Dore v. Bedminister Tp. Bd. of Ed., 185 N.J. Super. 447, 452 (App. Div. 1982), and on the basis of the record before us, we conclude that revocation is warranted in this case. Regardless of the underlying circumstances, the appellant pleaded guilty to and was convicted of an offense that involved the possession of a controlled dangerous substance. We find that a conviction for such an offense bears upon the appellant's fitness to teach and warrants revocation of his certification. In so concluding, we emphasize that possession of even a small amount of marijuana has been determined to be sufficient to support a finding that the teacher is unfit to teach, warranting both dismissal from his tenured employment and revocation of his teaching certification. In the Matter of the Tenure Hearing of R. Scott McIntyre, decided by the State Board of Education, June 7, 1995, aff'd, Docket #A-5942-94T5 (App. Div. 1996); In the Matter of the License of R. Scott McIntyre, decided by the State Board of Examiners, April 2, 1998. Therefore, we direct that the appellant's teaching certification be revoked.

Ronald K. Butcher abstained.

August 4, 2004

Date of mailing \_\_\_\_\_