

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF: STATE BOARD OF EXAMINERS
STEVEN ELWELL : ORDER OF REVOCATION
_____ : DOCKET NO: 685-02/02-304

At its meeting of February 21, 2002, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Steven Elwell from his tenured position with the Board of Education of the Lower Cape May Regional School District for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Steven Elwell, Docket No. 167-6/01 (Commissioner's Decision, October 1, 2001.) Elwell currently holds Teacher of Health and Physical Education, Teacher of Driver Education and Teacher of Elementary School certificates.

This case originated on June 11, 2001 when the Lower Cape May Regional School District Board of Education certified tenure charges against respondent, Steven Elwell. The district charged him with unbecoming conduct for engaging in sexual intercourse with a female student between March 1998 and August 1999 while Elwell was a coach for the wrestling team and the student was the manager for the team. On March 21, 2001, Elwell had pled guilty to 2nd degree sexual assault stemming from his improper actions with the student.

Elwell did not respond to the tenure charges and in a decision dated October 1, 2001, the Commissioner deemed the charges admitted. Since Elwell did not deny the charges, the Commissioner found that his actions constituted unbecoming conduct that warranted his dismissal from his tenured position. The Commissioner therefore granted summary decision to the Lower Cape May Regional Board of Education. The Commissioner also transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Elwell's certificates.¹ (Commissioner's Decision, slip op. at 2.)

¹ On January 20, 2004, the State Board of Education adopted a new administrative code governing professional licensure and standards. N.J.A.C. 6A:9-1 et seq. Although this decision was mailed after the effective date of the new code, the Board of Examiners' decision in this case predates the effective date of the new code and was therefore decided under the old code. All citations in this decision therefore are to the prior administrative code.

Thereafter, on February 21, 2002, the State Board of Examiners issued Elwell an Order to Show Cause as to why his certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing as well as Elwell's criminal conviction.

The Board sent Elwell the Order to Show Cause by regular and certified mail on April 8, 2002. The Order provided that Elwell must file an Answer within 20 days. Elwell filed an Answer on May 14, 2002. In his Answer Elwell admitted that the district had brought tenure charges against him. He also stated that he had pled guilty to second degree sexual assault. (Answer, ¶¶ 1-3). In the remainder of his Answer, Elwell claimed that he had been "set up" by the teenager and her boyfriend for money. He also claimed that he pled guilty because he lived in a small town and would not receive a fair trial. Elwell also added that he received jail time despite a prior assurance that he would receive a light sentence because he had negative personal information regarding the prosecutor. Finally, Elwell argued that he should be allowed to retain his elementary certificate since he had not been accused or convicted of having relations with a younger student. (Answer, ¶¶ 3-7.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on June 3, 2002, the Board sent Elwell 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, respondent 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. 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 his offense warranted action against his certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Although Elwell received the certified copy of the Hearing Notice, he did not respond.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Elwell's conduct which led to his subsequent loss of tenure and criminal conviction

constitute conduct unbecoming a certificate holder. At its meeting of February 27, 2003, the State Board of Examiners reviewed the charges and papers Elwell filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Elwell's offense were in dispute since he admitted to pleading guilty to the offense. Thus, Elwell has not denied the charges in the Order to Show Cause. Accordingly, the State Board of Examiners determined that summary decision was appropriate in this matter. N.J.A.C. 6:11-3.6(a)1. Thus, Elwell's actions regarding having a sexual relationship with a student constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Elwell's offense as set forth in the Order to Show Cause, represents just cause to act against his certificates pursuant to N.J.A.C. 6:11-3.6(a)1. We find 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. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. 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. Elwell's arguments about being "set up," victimized and a scapegoat for the prosecutor clearly indicate, even at this time, his refusal to take responsibility for his actions. Moreover, his suggestion that he be allowed to retain his elementary certificate because he did not have sex with a younger student is astonishing in its audacity! The egregious nature of Elwell's crime yields only one conclusion in this matter: that Elwell should never teach in any New Jersey classroom again. Accordingly, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of Elwell's certificates.

Accordingly, it is therefore ORDERED that Steven Elwell's Teacher of Health and Physical Education, Teacher of Driver Education and Teacher of Elementary School certificates be revoked on this 27th day of February 2003. It is further ORDERED that Elwell return his certificates to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Michael K. Klavon, Acting Secretary
State Board of Examiners

Date of Mailing: January 31, 2005

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