

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
TIMOTHY FETTER : ORDER OF REVOCATION
_____ : DOCKET NO: 0708-202

At its meeting of March 27, 2008, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that respondent Timothy Fetter was convicted in November 2001 of aggravated criminal sexual contact. As a result of the conviction, Fetter was sentenced to three years incarceration in State prison, ordered to submit to DNA testing, placed under community supervision for life, fined and ordered to forfeit his public employment. Fetter was also disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Fetter currently holds a Teacher of Elementary School Certificate of Eligibility, issued in August 1992 and a Teacher of Elementary School certificate, issued in December 1993. Fetter did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the State Board of Examiners voted to issue Fetter an Order to Show Cause at its meeting of May 1, 2008.

The Board sent Fetter the Order to Show Cause by regular and certified mail on June 23, 2008. The certified mail receipt was signed and returned. The regular mail copy was not returned. The Order provided that Fetter must file an Answer within 30 days. Fetter did not file an Answer. Thereafter, on November 10, 2008, the Board sent Fetter a second notice by regular and certified mail providing him an additional 15 days in which to file an Answer. The certified mail receipt was signed and returned. The regular mail copy was not returned. Once again, Fetter did not file an Answer.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on February 3, 2009, the Board sent Fetter a hearing notice by regular and certified mail. The notice explained that it appeared that no

material facts were in dispute and Fetter 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 whether the conduct underlying the conviction and resulting disqualification warranted action against his certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Fetter was also provided the opportunity to appear before the Board and testify on the sanction issue. Fetter did not file a response although the certified mail return receipt card had been signed.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether the conduct underlying Fetter's conviction and resulting disqualification constitutes conduct unbecoming a certificate holder. Since Fetter failed to respond to the Order to Show Cause or the hearing notice, at its meeting of May 11, 2009, the State Board of Examiners considered only the allegations in the Order to Show Cause. The Board of Examiners determined that no material facts related to Fetter's offense were in dispute since he never denied that he had committed the offense nor did he deny that he had been disqualified because of it. 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 Fetter's conviction and disqualification, predicated on the same offense as in the Order to Show Cause, represent just cause to act against his certificate pursuant to *N.J.A.C. 6A:9-17.5*. 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 dangerous. Individuals convicted of a crime that endangers the welfare of children fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers must serve as role models for 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.

In this case, Fetter has a conviction for a crime that involved aggravated criminal sexual contact. A teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain his certificate. *In re Grossman*, 127 *N.J. Super.* 13, 30 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). 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 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Accordingly, the State Board of Examiners finds that Fetter's disqualification from service in the public schools of this State because of his conviction for aggravated criminal sexual contact provides just cause to take action against his certificates.

That 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 State Board of Examiners 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 considers Fetter's offense so

significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of Fetter's Teacher of Elementary School Certificate of Eligibility and Teacher of Elementary School certificate.

Accordingly, on May 11, 2009, the Board of Examiners voted to revoke Fetter's Teacher of Elementary School Certificate of Eligibility and Teacher of Elementary School certificate. On this 22nd day of June 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Fetter's certificates be effective immediately. It is further ORDERED that Timothy Fetter 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:6-28.

RRH:MZ: