

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
DAVID KELLY : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 1112-187

At its meeting of March 1, 2012, the State Board of Examiners (Board) reviewed information received from the Office of Criminal History Review (OCHR) indicating that, in January 2012, respondent David Kelly was convicted in Pennsylvania of Possessing Instrument of Crime with Intent to Employ it Criminally and Recklessly Endangering Another Person. As a result of the convictions, Kelly was disqualified from public school employment in New Jersey pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Kelly currently holds a Teacher of Music Certificate of Eligibility With Advanced Standing, issued in August 1995 and a Teacher of Music certificate, issued in March 2000. Kelly challenged the accuracy of his criminal history record before the Commissioner of Education.<sup>1</sup> Upon review of the above information, the Board voted at its meeting of April 2, 2012 to issue Kelly an Order to Show Cause why his certificates should not be revoked.

The Board sent Kelly the Order to Show Cause by regular and certified mail on April 4, 2012. The Order provided that Kelly must file an Answer within 30 days. The certified mail receipt was signed and returned and the regular mail copy was not returned. Kelly responded on April 13, 2012. In that Answer, Kelly admitted that he was convicted of certain misdemeanor offenses but denied that he was convicted of any “disqualifying offense.” (Answer, ¶¶ 3, 5). He also admitted that he was challenging his disqualification before the Commissioner of Education. (Answer, ¶ 6). Kelly also denied that he had engaged in unbecoming conduct and demanded that the Order to Show Cause be dismissed. (Answer, ¶¶ 7, 8).

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<sup>1</sup> The challenge to Kelly’s criminal history record is currently at the Office of Administrative Law.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on April 19, 2012 the Board sent Kelly a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Kelly 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. Kelly was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Kelly submitted a written response on May 18, 2012. In that response he also requested to appear before the Board.

In his Hearing Response, Kelly stated that he had displayed a firearm to remove trespassers who had been repeatedly asked to leave his property. (Hearing Response, p. 1). When he was putting the firearm away it accidentally discharged at least 200 feet away from where he had seen the trespassers. (Hearing Response, p. 1). This incident led to Kelly's conviction for some misdemeanor offenses in Pennsylvania, for which he was sentenced to probation. (Hearing Response, p. 1). Kelly argued that his misdemeanor convictions should not result in an automatic suspension or revocation of his certificates but that the penalty imposed should be proportionate to the gravity of the offense. (Hearing Response, p. 2). Kelly argued that his judgment at the time of the incident was "clouded by anxiety, depression, and alcohol use." (Hearing Response, p. 4). He added that his behavior did not touch upon his employment or affect any co-worker or student. (Hearing Response, p. 4). Kelly also noted that, with

counseling, he had learned “to manage the emotions which led to his poor exercise of judgment.” (Hearing Response, p. 4). He also stated that given his prior, unblemished record, under these circumstances, revocation would be “a draconian and disproportionate penalty.” (hearing Response, p. 4).

In testimony before the Board, Kelly’s attorney reiterated that Kelly’s offense had nothing to do with his job and that he did not fire at anyone. He stated that Kelly was under marital strain, financial strain and had alcohol issues at the time. He added that Kelly was deeply remorseful and added that teaching was Kelly’s life. Kelly’s ex-wife and uncle also spoke on his behalf, testifying as to his excellent character and the importance of teaching in his life. Kelly also testified adding that his grave error in judgment was the worst mistake of his life. He added that he thought he was protecting his family and property and that he took full responsibility for his actions. He added that he was meant to teach and missed working with students.

The threshold issue before the Board in this matter is whether Kelly’s conviction and subsequent disqualification constitute conduct unbecoming a certificate holder. At its meeting of September 21, 2012, the Board considered the allegations in the Order to Show Cause, Kelly’s Answer, Hearing Response and testimony. The Board determined that no material facts related to Kelly’s offense were in dispute since he never denied that she had engaged in the conduct and been convicted. 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 Kelly’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: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 a danger. Individuals convicted of crimes such as Possessing Instrument of Crime with Intent to Employ it Criminally and Recklessly Endangering Another Person, which, in this case, involved the use of a weapon, fall squarely within this category. This strong legislative policy statement is 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. Clearly, Kelly's conviction indicates his actions here fall short of what is expected of a role model.

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 public school employment be permitted to continue to hold himself out as a teaching staff member. Thus, notwithstanding Kelly's otherwise long, unblemished career, because the Legislature considers Kelly's offense so significant, the Board believes that the only appropriate sanction in this case is the revocation of Kelly's certificates. Moreover, even if Kelly prevails in his challenge to his criminal history record and his offenses are found to be non-disqualifying, the Board maintains that revocation is appropriate here given the nature of the conduct and the use of a firearm.

Accordingly, on September 21, 2012, the Board voted to revoke David Kelly's Teacher of Music Certificate of Eligibility With Advanced Standing and his Teacher of Music certificate. On this 30th day of November 2012 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of David Kelly's certificates be effective immediately. It is further ORDERED that Kelly 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.

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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:6-38.4.