

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
KATHRYN SCHMICKING GUERRA : ORDER OF REVOCATION
_____ : DOCKET NO: 1112-161

At its meeting of January 19, 2012, the State Board of Examiners (Board) reviewed information received from the Hudson County Prosecutor's Office (HCPO), the Office of Criminal History Review (OCHR) and the Bayonne School District (Bayonne) regarding Kathryn Schmicking Guerra (Guerra). As a condition of her acceptance into a Pre-Trial Intervention Program (PTI) after being charged with Forgery and Theft for falsifying payroll sheets, Guerra was required to forfeit her public employment and was disqualified from future public employment. Guerra currently holds Teacher of Preschool Through Grade 3 and Teacher of Students With Disabilities Certificates of Eligibility With Advanced Standing, both issued in September 2008 and Teacher of Preschool Through Grade 3 and Teacher of Students With Disabilities certificates, both issued in September 2009. Upon review of the above information, the Board voted at its meeting of March 1, 2012 to issue Guerra an Order to Show Cause why her certificates should not be revoked.

The Board sent Guerra the Order to Show Cause by regular and certified mail on March 7, 2012. The Order provided that Guerra must file an Answer within 30 days. Guerra filed a response on April 5, 2012. In that Answer, Guerra admitted that she entered into a plea agreement and had successfully completed PTI. (Answer, ¶ 5). She also admitted that she was precluded from public school employment. (Answer, ¶ 6). Guerra argued however, that her certificates should not be revoked because she could still seek private school employment and the revocation of her certificates would preclude her from many educational opportunities in those institutions. (Answer, ¶ 6).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on April 12, 2012, the Board sent Guerra a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Guerra 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 her certificates. It also explained that, upon review of the charges against her and the legal arguments tendered in her defense, the Board would determine if her disqualifying offense warranted action against her certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Guerra was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Guerra submitted a Hearing Response on July 13, 2012. She did not request to appear before the Board.

In her Hearing Response, Guerra stated that, in addition to her full-time teaching duties in Bayonne, she also worked in an after school program there and was assigned to provide home instruction to an autistic student. (Hearing Response, p. 7). She received an hourly wage for this position, based upon timesheets that were submitted monthly. (Hearing Response, p. 7). Guerra claimed that the student's mother told her she could sign the mother's name to the timesheets since the parent did not have time to do it herself. (Hearing Response, p. 7). Guerra also claimed that the student's mother told Guerra that she could put hours on her timesheets for days that she had missed, with the understanding that she would make up those hours at a later date. (Hearing Response, p. 7). Guerra stated that the student's mother later denied she had ever given Guerra permission to sign her name to the timesheets or to put down hours she had not yet worked and reported Guerra to the police. (Hearing Response, p. 7). Guerra admitted that she

pled guilty to Theft By Deception and was sentenced to PTI with the condition that she forfeit her public employment and her right to any future public employment. (Hearing Response, pp. 7-8). Guerra successfully completed PTI and stated that she had applied to have her criminal record expunged. (Hearing Response, p. 8). She also detailed her many volunteer and charitable activities and attached copies of many community service awards she had received. (Hearing Response, pp. 3-4). In her Hearing Response, Guerra also argued that because her conviction had been voided by her successful completion of PTI, she was not disqualified from public employment pursuant to the disqualification statute, *N.J.S.A. 18A:6-7.1 et seq.*, and therefore the Board had no “just cause” to revoke her certificates. (Hearing Response, pp. 8-9). She also stated that she entered her plea erroneously since she maintained that she had the student’s mother’s permission for what she had done and only agreed to have committed a crime so that she might receive PTI. (Hearing Response, p. 9). She argued that she was a victim of the student’s parents and that she should not have her certificates revoked for a crime she did not commit. (Hearing Response, pp. 9-10). Finally, she argued that revocation would be financially devastating to her and her family and that, if a penalty had to be imposed, suspension was more appropriate here. (Hearing Response, p. 10).

The threshold issue before the Board in this matter is whether Guerra has engaged in conduct unbecoming a certificate holder. At its meeting of November 30, 2012, the Board considered the allegations in the Order to Show Cause, Guerra’s Answer and her Hearing Response. The Board determined that no material facts related to Guerra’s offense were in dispute since she never denied that she was precluded from public employment. 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 charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The Board must now determine whether Guerra's permanent bar from public employment as set forth in the Order to Show Cause, represents just cause to act against her certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

The Board 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. 6A:9-17.5*. "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.

Although Guerra argues that her preclusion from public employment should not result in a revocation or suspension of her certificates since she is not disqualified pursuant to *N.J.S.A. 18A:6-7.1 et seq.*, in fact, this case does present the Board with a *de facto* disqualification. By agreeing to that term as a prerequisite to PTI, Guerra can never again work in a public school setting in New Jersey.

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 that person be permitted to continue to hold himself out as a teacher. In this case, the court imposed the condition of the Consent Order as a prerequisite to Guerra's admission into PTI. Thus, because Guerra's conduct was so significant as to warrant a lifetime bar, the Board believes that the only appropriate sanction in this case is the revocation of Guerra's certificates.

Guerra argues that because PTI is over the Board has no basis upon which to act. Yet Guerra conveniently forgets the most salient word in that Consent Order: never. That permanent bar insisted upon by the court speaks volumes about Guerra's fitness to retain her certificates. Moreover, as noted above, pursuant to *N.J.A.C. 6A:9-17.5*, the Board "may revoke or suspend the certificate(s) of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Other just cause shall include, but not be limited to, offenses within the terms of the forfeiture statute, N.J.S.A. 2C:51-2, or the disqualification statute, N.J.S.A. 18A:6-7.1." Clearly, the Board is not bound by Guerra's disqualification status under those statutes in making its determination as to whether she should retain her teaching certificates. There can be no question that where, as here, an individual is forever barred from public school employment in the State of New Jersey, revocation is the appropriate sanction.

Accordingly, on November 30, 2012, the Board voted to revoke Kathryn Schmicking Guerra's Teacher of Preschool Through Grade 3 and Teacher of Students With Disabilities Certificates of Eligibility With Advanced Standing, and her Teacher of Preschool Through Grade 3 and Teacher of Students With Disabilities certificates. On this 28th day of February 2013 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Guerra's certificates be effective immediately. It is further ORDERED that Guerra return her 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:6-38.4*.