

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
JOHN P. MCCABE : ORDER OF REVOCATION
_____ : DOCKET NO: 1617-240

At its meeting of May 12, 2017, the State Board of Examiners (Board) reviewed information it had received regarding John P. McCabe. The Wanaque Police Department and the Criminal History Review Unit (CHRU) notified the Board that, on March 14, 2016, McCabe was convicted of a Disorderly Person offense after having been charged with Lewdness. According to the Complaint, on two separate occasions, McCabe had placed his hand in his pocket and rubbed his clearly defined genitals in a public parking lot during business hours while pedestrians and customers were present.

McCabe currently holds a Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing and Teacher of Health and Physical Education and Teacher of Driver Education certificates. After reviewing the above information, at its June 15, 2017 meeting, the Board voted to issue an Order to Show Cause to McCabe as to why his certificates should not be revoked.

The Board sent McCabe the Order to Show Cause by regular and certified mail on June 20, 2017. The Order provided that McCabe must file an Answer within 30 days. McCabe responded on July 21, 2017. In his Answer, McCabe denied that he had been convicted of a Disorderly Persons offense or any other type of offense related to the charges filed against him. (Answer, ¶ 3). McCabe stated that on March 14, 2016, he had been granted entry into the Court's Conditional Dismissal program and did not enter a guilty plea. (Answer, ¶ 3). He added that on April 27, 2017 the charges were dismissed and that "no finding or adjudication of guilty occurred relative to these charges." (Answer, ¶ 3). In the remainder of his Answer, McCabe denied that there was any reason to show cause why his certificates should not be revoked since there had been no finding or adjudication of guilt. (Answer, ¶ 5).

Since there were material facts in dispute, on October 23, 2017, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. ALJ Gail M. Cookson heard the matter on February 27, 2018. The record closed on July 30, 2018 and ALJ Cookson issued an Initial

Decision on August 2, 2018. *In the Matter of the Certificates of John McCabe*, Dkt. No. EDE 15745-17 (Initial Decision, August 2, 2018).

After reviewing the testimony and the record, ALJ Cookson found that on July 30, 2015, witness Kristine Lecca-Martinez, had observed McCabe, standing in a parking lot with his hand down his shorts and stroking his hand with back and forth movements as if he were masturbating. (Initial Decision, slip op. at 3.) Lecca-Martinez reported the incident to police a few days later and they requested surveillance video of the shopping center. *Ibid.* After reviewing the video and identifying McCabe's vehicle, police spotted his car several days later in another store parking lot. *Id.* at 4. At that time, a patrolman observed McCabe standing in front of a CVS with his hand in his pants manipulating his penis. *Ibid.* McCabe was arrested later that same day. *Ibid.* ALJ Cookson concluded that McCabe "was observed on two occasions-July 30 and August 12, 2015- to have his hands down his shorts and masturbating. There was no exposure and he was unaware of or unconcerned with whether others could see him." *Ibid.*

Although she acknowledged that McCabe stated that he was never convicted of any offense and never entered a guilty plea, ALJ Cookson noted that McCabe did not present any evidence in mitigation or "even by way of explanation at the hearing, nor did he rebut the personal observations made by the persons who witnessed his lewd acts." *Id.* at 6. The ALJ therefore concluded that the Board had "successfully proven by the preponderance of the credible evidence and through direct observational evidence that McCabe engaged in conduct unbecoming a teacher." *Ibid.* She did note, however, that "these incidents were not part of larger or more persistent pattern of conduct, the conduct did not occur in school or on school property, or even during the school year, and no school children were present. Moreover, there was no evidence that respondent exposed himself or that non-adults would have inferred he was masturbating." *Ibid.*

In assessing the appropriate penalty, ALJ Cookson determined the allegations were serious and warranted a substantial suspension but not a permanent revocation of McCabe's certificates. *Id.* at 6-7. Judge Cookson therefore ordered a three-year suspension of McCabe's certificates, dating from his date of

discharge from his district. *Id.* at 7. The Deputy Attorney General (DAG) representing the Board filed Exceptions. McCabe did not file Reply Exceptions.

In her Exceptions, the DAG argued that McCabe's conduct warranted the revocation, rather than the suspension, of his teaching certificates. (Exceptions, pp. 2, 5-8). The DAG added that the Board did "not seek to disturb the findings of fact made in the Initial Decision." (Exceptions, p. 3). Rather, she emphasized that in a similar prior case, the Board had imposed the penalty of revocation on an individual who had been masturbating in a clothing store, even though, as here, the ALJ had recommended a less severe penalty. (Exceptions, pp. 6-8). The DAG also noted that the Board had no authority to order a suspension with a retroactive suspension date and urged the Board to modify the penalty to one of revocation. (Exceptions, pp. 2, 8-9).

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of November 1, 2018, the Board reviewed the Initial Decision. After full and fair consideration of the Decision and the Exceptions the Board voted to adopt the Initial Decision, with modification as to penalty.

"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. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, after assessing the evidence and credibility of the witnesses, ALJ Cookson concluded that McCabe masturbated in public in plain view on two separate occasions. Even though McCabe did not publicly expose himself, his conduct indicates a serious lapse in judgment and convinced the ALJ that a significant suspension was warranted here. After reviewing the entire record, the Board agrees with the ALJ's assessment regarding the highly inappropriate nature of McCabe's conduct. However, the Board diverges with the ALJ's evaluation of the proper resultant penalty and believes that revocation is warranted here.

Accordingly, on November 1, 2018, the Board voted to adopt the Initial Decision with modification as to penalty and ordered the revocation of McCabe's certificates. On this 17th day of December 2018, the Board formally adopted its written decision to adopt the Initial Decision with modification and it is therefore ORDERED that John P. McCabe's Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing and his Teacher of Health and Physical Education and Teacher of Driver Education certificates are hereby revoked, effective immediately. It is further ordered that McCabe return his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, 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

RRH/MZ/th

Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.