

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CREDENTIAL OF : STATE BOARD OF EXAMINERS
MARK A. KINNEY : ORDER OF SUSPENSION
_____ : DOCKET NO: 1819-213

At its meeting of September 19, 2019, the State Board of Examiners (Board) reviewed information from the Burlington County Prosecutor’s Office and the Office of Student Protection (OSP) to the State Board of Examiners (Board) regarding Kinney. On or about February 7, 2019, Kinney was charged with 2 counts of Sexual Assault (2nd degree), Endangering the Welfare of a Child-Sexual Conduct (2nd degree), and Official Misconduct (2nd degree). Kinney allegedly engaged in a sexual relationship with a minor student. Kinney would be disqualified from public employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.*, if he is convicted. Additionally, after investigating, on April 22, 2019, the Institutional Abuse Investigation Unit (IAIU) substantiated Sexual Abuse – Sexual Molestation regarding Kinney’s interactions with the minors.

Kinney currently holds a Substitute Credential expiring October 2022. Upon review of the above information, at its meeting of November 1, 2019, the Board voted to issue Kinney an Order to Show Cause as to why his credential should not be suspended pending the resolution of the criminal proceedings against him.

The Board sent Kinney the Order to Show Cause by regular and certified mail on November 19, 2019. The Order provided that Kinney must file an Answer within 30 days. Kinney filed an Answer on January 17, 2020. In that Answer, Kinney admits that he was charged with 2 counts of Sexual Assault (2nd degree), Endangering the Welfare of a Child-Sexual Conduct (2nd degree), and Official Misconduct (2nd degree), but vehemently denies the allegations. (Answer ¶ 3). Kinney indicates that there is no evidence beyond a statement from the alleged victim. (Answer ¶ 3). Kinney indicates he has not been convicted of the alleged crimes and the Board’s finding is premature. (Answer, ¶ 5).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on January 27, 2020, the Board sent Kinney a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts

were in dispute. Thus, he 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 credential. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Kinney's offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Kinney was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Kinney did not respond.

The threshold issue before the Board in this matter, therefore, is whether there is just cause to take action against Kinney's credential. At its meeting of June 26, 2020, the Board considered the allegations in the Order to Show Cause and Kinney's Answer. The Board determined that no material facts related to Kinney's offense were in dispute since he did not deny that he had been charged with the offenses alleged. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Kinney's conduct and charges, as set forth in the Order to Show Cause, represent just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.4*. The Board finds that they do.

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:9B-4.4*. 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 crimes such as Sexual Assault, Official Misconduct, and Endangering the Welfare of a Child 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.

Moreover, 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). In this case, Kinney has been charged with Sexual Assault, Official Misconduct, and Endangering the Welfare of a Child. The Board therefore finds that Kinney's potential disqualification from service in the public schools of this State because of the charges for such serious offenses provides just cause to take action against his credential.

Accordingly, on June 26th, 2020, the Board voted to suspend Kinney's credential pending resolution of the criminal proceedings against him. On this 30th day of July, 2020, the Board formally adopted its written decision to suspend and it is therefore ORDERED that Mark A. Kinney's substitute credential is hereby suspended, effective immediately. If the charges are resolved in his favor, he shall notify the Board for appropriate action regarding the suspension order. It is further ORDERED that Kinney return his credential to the Secretary of the State Board of Examiners, Office of Certification and Induction, PO Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

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.