

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
MAJOR M. SMITH II : ORDER OF REVOCATION
_____ : DOCKET NO: 1718-217

At its meeting of November 1, 2018, the State Board of Examiners (Board) reviewed information the Office of Student Protection (OSP) provided regarding Major M. Smith II. On April 10, 1995, Smith was found guilty of 3rd degree Conspiracy and 3rd degree Possession of Controlled Dangerous Substances (CDS)/Analog. On August 31, 2000, he was found guilty of Possession of Narcotic Paraphernalia. On January 6, 2004, he was found guilty of 4th degree Cruelty and Neglect of Children. On March 4, 2011, he was found guilty of 3rd degree Resisting and Eluding Arrest. The OSP notified the Board that, as a result of his convictions, Smith is disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Smith currently holds a Teacher of Handicapped certificate.

Smith did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the Board voted at its meeting of December 17, 2018 to issue Smith an Order to Show Cause as to why his certificate should not be revoked.

After obtaining a corrected address for Smith, the Board sent Smith the Order to Show Cause by regular and certified mail on May 7, 2019. The Order provided that Smith had 30 days to respond. The certified mail receipt was signed and returned and the regular mail copy was not returned. Smith did not file a response.

Thereafter, on June 12, 2019, the Board sent Smith another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. The certified mail receipt was signed and returned and the regular mail copy was not returned. Smith did not file a response.

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on July 11, 2019, the Board sent Smith a hearing notice by regular and certified mail. The notice explained that the allegations in the Order to Show Cause were deemed to be admitted as a result of his failure to file an Answer. Thus, Smith 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 about the appropriate sanction in the event that the Board found just cause to take action against his certificate. 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 offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Smith was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. The certified mail receipt was unclaimed, and the regular mail copy was not returned. Once again, Smith did not file a response.

In October 2019, the Board became aware that Smith was incarcerated. Accordingly, to ensure proper service, the Board resent the Order to Show Cause on October 22, 2019 to the address where Smith was incarcerated. The certified mail receipt was signed and returned, and the regular mail copy was not returned. The Board then sent the second notice of order to show cause via certified and regular mail on December 31, 2019 to Smith. This certified mail receipt was signed and returned, and the regular mail copy was not returned.

Thereafter, the Board sent several hearing notices at varying dates (January 29, 2020, February 19, 2020, and June 24, 2020), all of which were returned as undeliverable because Smith was no longer incarcerated. In January 2021, the Board obtained another address for Smith and sent him the appropriate hearing notice via regular and certified mail on January 27, 2021. The certified mail was unclaimed, and the regular mail copy was not returned. This is deemed good service of the hearing notice.

The threshold issue before the Board in this matter is whether Smith's convictions and subsequent disqualification constitute conduct unbecoming a certificate holder or other just cause. Since Smith failed to respond to the Order to Show Cause, the allegations therein are deemed admitted. *N.J.A.C. 6A:9B-4.6(c)*. Consequently, at its meeting of April 1, 2021, the Board considered only the allegations in the Order to Show Cause and the information received from the OSP. The Board concluded that no material facts related to Smith's offense were in dispute since he never denied that he had engaged in the conduct alleged and had been convicted and therefore determined that summary decision was appropriate in this matter.

N.J.A.C. 6A:9B-4.6(h). After reviewing the allegations, the Board found that Smith engaged in unbecoming conduct.

The Board must now determine whether Smith's convictions 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:9B-4.4. 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 3rd degree Conspiracy, 3rd degree Possession of CDS, Possession of Narcotics Paraphernalia, 4th degree Cruelty and Neglect of Children, and 3rd degree Resisting an Eluding Arrest falls squarely within this category. The strong legislative policy statement is also 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. 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 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this instance, Smith's convictions demonstrate behavior that falls far short 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 offenses are 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 and the Commissioner consider Smith's offenses so significant, the Board believes that the only appropriate sanction in this case is the revocation of his certificates.

Accordingly, on April 1, 2021, the Board voted to revoke Major M. Smith II's Teacher of Handicapped Certificate. On this 13th day of May 2021, the Board voted to adopt its formal written decision

and it is therefore ORDERED that Smith's certificates are revoked, effective immediately. It is further ORDERED that Smith 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.

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.