

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE LICENSES OF : STATE BOARD OF EXAMINERS
WILLIAM R. PALUMBO : ORDER OF REVOCATION
_____ : DOCKET NO. 288 - 03/95 - 102

At its meeting of March 30, 1995, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that William R. Palumbo, who holds Teacher of Social Studies and Student Personnel Services licenses in New Jersey, had been disqualified from public school employment for his 1989 conviction for conspiracy to distribute a controlled dangerous substance in Virginia and his conviction in 1991, in the state of Illinois, for conspiracy to distribute one thousand (1,000) pounds of marijuana. Mr. Palumbo was sentenced on April 3, 1989 to twelve years in prison and a \$50.00 fine and on June 28, 1991 was sentenced to three years in prison and a \$50.00 fine. Mr. Palumbo did not appeal his disqualification.

At that meeting the State Board of Examiners voted that said convictions constituted sufficient grounds for issuing an Order to Show Cause. The Order to Show Cause was mailed to Mr. Palumbo by regular and certified mail on May 22, 1995. On June 15, 1995 an Answer to the Order to Show Cause was received from Philip Feintuch, Esq., on behalf of his client, William Palumbo. The response indicated that the matter of Mr. Palumbo's disqualification was being appealed before the State Board of Education. On February 7, 1996, the secretary of the State Board of Examiners requested that Mr. Feintuch provide in writing the results of the appeal.

In the interim, the State Board of Education decided two cases which impacted on the hearing process conducted by the State Board of Examiners. The first case is captioned, In the Matter of the Certificates of Sheridan. The other is captioned, In the Matter of the Certificates of

Vitola. Within these two cases, the State Board of Education determined that the State Board of Examiners was required to amend its regulations in order to permit it to hear directly legal matters in which material facts are not in dispute. During the pendency of the revisions to the State Board of Examiner' regulations regarding its hearing process, all such hearings were held in abeyance. Said regulatory amendments were finally codified in May of 1997.

On April 14, 1997, the secretary of the State Board of Examiners advised Mr. Feintuch that, as Mr. Palumbo's disqualification had been affirmed by both the State Board of Education and the Appellate Division of the Superior Court of New Jersey, he was being provided with twenty (20) days in which to submit an Amended Answer to the Order to Show Cause. A further letter of explanation noting that the earlier Answer was no longer responsive because of the actions of the court on appeal was forwarded to Mr. Feintuch at his request on June 11, 1997.

On June 24, 1997, an Amended Answer to the Order to Show Cause was received from Mr. Feintuch on behalf of Mr. Palumbo.

Thereafter, pursuant to the newly recodified hearing process embodied in N.J.A.C. 6:11-3.6(a)1, on July 21, 1997, a hearing notice was mailed by certified mail to Mr. Feintuch. A regular mail copy was forwarded to Mr. Palumbo. Said notice explained that , it appearing that no material facts were in dispute, Mr. Palumbo was provided an opportunity to offer legal argument on the issue of whether his conviction constituted conduct unbecoming a teacher.

On July 31, 1997, a response to the hearing notice was received from Mr. Feintuch on behalf of Mr. Palumbo. His response to the hearing notice raises the following points:

Mr. Palumbo recitation of the facts suggests that he has more than paid the price for his unlawful conduct. He denies that he was ever convicted nor did he ever plead guilty to buying, selling, handling, or using drugs. Instead, he avers he pled guilty to a count of conspiracy,

committed approximately twelve years ago. He claims he was hired by a group of men to locate, purchase and prepare boatyard equipment for later shipment on his vessel to the Caribbean where they were to establish a shipyard. Mr. Palumbo admits that the barge he used to ship the machinery was loaded with marijuana. Mr. Palumbo claims, however, that the corporation he created to move the machinery was found to be a “front” to unload the drugs. He did not know, at the time he was employed by these partners, of their unlawful scheme. Since Mr. Palumbo was the name listed on the corporate records, he was the one traceable and ultimately accountable. He further avers a second such project headquartered in New Orleans was carried out while he was hospitalized. Thereafter, Mr. Palumbo allegedly contacted the FBI, offered them information about his former employers, and hoped for immunity from prosecution in exchange. However, he claims, the prosecutor violated his earlier agreement with Mr. Palumbo and used the information to indict Mr. Palumbo in 1987. Mr. Palumbo plea bargained a prison sentence of not less than twelve years, but after being incarcerated for 11 months, Mr. Palumbo’s 1989 conviction was reversed. However, some 14 months later the same prosecutor indicted him in another forum, for which he pled guilty to a lesser charge. Upon his plea, he received three years credit for time spent in prison and returned to prison for the completion of his earlier sentence.

Since his release from prison Mr. Palumbo has served in a teaching capacity at a New Jersey Vocational school, and desires to re-enter the profession. He claims the circumstances that led to his criminal past were matters over which he had little or no control. He submits that if the State Board of Examiners revokes his licenses to teach now, it is clearly overreaching and is more than punitive in nature, in that he has paid his debt to society.

Mr. Palumbo's Amended Answer to the Order to Show Cause merely avers there is no probable cause existing for the revocation or suspension of his teaching licenses. His Amended Answer adds that any action to revoke or suspend his licenses would be inequitable and work a grave injustice upon him. He seeks a plenary hearing on the matter.

At its October 9, 1997 meeting, the State Board of Examiners reviewed the charges against Mr. Palumbo as well as his responses to the Order to Show Cause and the hearing notice. After its review, the State Board of Examiners determined that no material facts related to Mr. Palumbo's offenses were in contest, and that the matter could therefore, proceed to a determination as to whether the charges levied in the Order to Show Cause constitute conduct unbecoming a license holder pursuant to N.J.A.C. 6:11-3.6(a)1.

The State Board of Examiners first noted that the instant hearing is not one which considers evidence of rehabilitation. See, In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners, decided by the State Board of Examiners March 28, 1996, aff'd State Board of Education September 6, 1996. Therein, the State Board of Examiners held:

Neither does the language of this regulation [N.J.A.C. 6:11-3.6] support Petitioner's apparent contention that "new findings" includes evidence of rehabilitation or current ability to teach. See, e.g., In the Matter of the Revocation of the Teaching Certificate of James Noll by the State Board of Examiners, decided by the State Board of Examiners, February 7, 1990, citing Cox v. State Bd. of Examiners (App. Div. Docket No. A-3527-81T3)(November 18, 1983). Therein, it was determined that the purpose of the hearings conducted by the State Board of Examiners pursuant to N.J.A.C. 6:11-3.7(b)ii (now, N.J.A.C. 6:11-3.6(a)1) is 'to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth the Order to Show Cause, not to afford an opportunity to show rehabilitation. (Id. at p. 4)

Hence, the State Board of Examiners did not consider Mr. Palumbo's statements concerning his alleged rehabilitation or occupations since his release from prison, but instead focused on

assessing whether the criminal charges at issue, which Mr. Palumbo does not deny having committed, constitute conduct unbecoming a license holder.

In this regard, school law cases have traditionally recognized the right of the State Board of Examiners to revoke license where the teacher was involved in criminal activities, even if said activities were not related to the classroom, see Cox v. State Board of Examiners (App. Div. Docket No. A-3527-81T3) (November 18, 1983); State Board of Examiners v. Krupp, 3 N.J.A.R. 285 (1981). Involvement with drugs, the use of drugs or the possession of drugs are inconsistent with the State's policy to eliminate drug abuse in the schools, In the Matter of the Tenure Hearing of David Earl Humphreys, 1978 S.L.D. 689. Misuse of dangerous drugs by students themselves, or by the role models to whom students look for guidance, will not be tolerated under any circumstances. In the Matter of the Certificate of Barbara Corwick, OAL Docket No. EDE 3562-87, State Board of Examiners decision (March 24, 1988).

Similarly, Mr. Palumbo's argument that he never used drugs himself nor did his criminal involvement with drugs touch and concern his performance as a teaching staff member must also fail. The State Board of Examiners in preceding case law has addressed respondent's argument that his offense, involving drugs, did not touch or concern his employment as a teaching staff member. In Krupp, supra, the respondent contended that his offense, murder committed while he was under the influence of drugs, was also not one that involved pupils or others at the school, or the performance of his teaching duties. Therein, it was determined:

In the determination of issues affecting the security of tenured teachers in their positions and their holding of teaching certificates, the private lives of teachers, separate from their school duties, have frequently been considered legitimate concerns. In this regard, the Commissioner held in the case captioned, In the Matter of the Tenure Hearing of Robert H. Beam, 1973, S.L.D. 157, at 163:

[R]espondent's argument that, because the occurrence happened in the evening away from school premises, both the Board and the

Commissioner have no authority to act, is without merit. The teaching profession is chosen by individuals who must comport themselves as models for young minds to emulate. This heavy responsibility does not begin at 8:a.m. and conclude at 4:00 p.m., Monday through Friday, only when school is in session. Being a teacher requires, *inter alia*, a consistently intense dedication to civility and respect for people as human beings. The Commissioner has, on past occasions, determined tenure charges arising from incidents which happened in the evening both on and off school property. See, In the Matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County, 1965 S.L.D. 159, aff'd State Board of Education 1970 S.L.D. 448; In the Matter of the Tenure Hearing of John H. Stokes, School District of the City of Rahway, Union County, 1971 S.L.D. 623.

The Commissioner of Education as well as the State Board of Education have affirmed this concept often. In this regard, see, e.g., In the Matter of the Tenure Hearing of Paula Grossman, et al., 1972 S.L.D. 144 aff'd App. Div. 127 N.J. Super 13 (App. Div. 1974); In the Matter of the Tenure Hearing of John Gish, 1980 S.L.D., (decided by the Commissioner of Education October 27, 1980); In the Matter of the Tenure Hearing of Ernest Tordo, 1974 S.L.D. 97. Accord, Alfredo Arocha and Lazaro Gonzalez, v. Board of Education of the Hudson County Areas Vocational-technical Schools District, Hudson County, decided by the Commissioner August 16, 1984, rev'd, State Board of Education, April 3, 1985. Therein, the State Board of Education dismissed two non-tenured custodians/school bus drivers for drug convictions that took place outside school. The State Board of Education concluded that:

the paramount interests of the students dictate that all public school employees who have significant contact with students and who therefore may affect drug use among students by virtue of their positions have an obligation to avoid conduct that encourages or condones drug use. A conviction for drug related conduct violates this duty, thereby touching the position of such employee. *Id.* at p. 8.

See, also, In the Matter of the Tenure Hearing of R. Scott McIntyre, Board of Education of North Hunterdon-Voorhees Regional High School District, 96 N.J.A.R. 2d EDU 718, decided by

the Commissioner January 13, 1995, State Board decision June 7, 1995, Appellate Decision July 10, 1996. Therein the Commissioner of Education dismissed a four-year tenured teaching staff member who was convicted of possession of 6.29 grams of marijuana, finding respondent guilty of conduct unbecoming a teaching staff member. The Commissioner rejected the teacher's argument that his conviction did not touch and concern his teaching position, as well as his reliance on Robert P Valenti, *supra*. The Commissioner emphasized that with respect to the possession of controlled dangerous substances by an educator, analyses which consider quantity or measure shades of misconduct are inappropriate. (Id at. 725.) In rejecting McIntyre's contention that the offense did not touch and concern his teaching position, the Commissioner relied on Aroca and Gonzalez, *supra*. In addition he quoted, In re Tenure Hearing of Jacque Sammons, 1972 S.L.D. 302, 321, for the proposition that

Teachers mold the habits and attitudes of their pupils and these pupils learn “*** not only what they are taught by the teacher, but what they see, hear, experience, and learn about the teacher.

Both the State Board of Education and the Appellate Division of the New Jersey Superior Court agreed with the Commissioner's reasoning in the McIntyre matter. The Appellate Division noted in its decision that “The State and District Boards reasonably could have concluded that it was time to send a strong message to all teachers and that dismissal of McIntyre was necessary to avoid trivializing drug use and possession in the minds of students.” McIntyre, Super Ct., App. Div., supra at p.727.

Thus, despite where the drug violation occurred, what amount of drugs the conviction was predicated upon, or the length of time a school employee has served, drug offenses touch, concern and violate the lofty position of trust held by teaching staff members. Accordingly, respondent's contrary arguments posited in this matter are dismissed as being without merit.

In addition, the State Board of Examiners notes that Mr. Palumbo is disqualified from employment in the public schools pursuant to N.J.S.A. 18A:6-7.1 et seq. In enacting that statute, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger to them. This strong policy statement on the part of the Legislature offers guidance regarding the appropriate sanction in this matter.

Accordingly, in light of this State's strong policy opposing involvement with illegal drugs, the State Board of Examiners finds respondent's convictions conduct unbecoming a license holder. The appropriate penalty for his unbecoming conduct is the revocation of respondent's licenses.

It is, therefore, ORDERED that, the State Board of Examiners having reviewed the charges and having found that said charges warrant revocation of William Palumbo's licensure, William Palumbo's Teacher of Social Studies and Student Personnel Services licenses are hereby revoked on this 9th day of October, 1997.

It is further ORDERED that William Palumbo return his licenses to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within fourteen (14) days of receipt of this letter.

Secretary
State Board of Examiners

Date of Mailing: November 19, 1997

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

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