

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
MARILYN KIRBY : ORDER OF REVOCATION
_____ : DOCKET NO: 557-04/00-248

At its meeting of April 6, 2000, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that Marilyn Kirby was convicted in 1991 on charges of possession of cocaine on or near school property. As a result of such conviction, Kirby was disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 *et seq.* Kirby did not appeal such disqualification before the Commissioner of Education. Upon review of the above information, at that meeting the State Board of Examiners voted to issue Kirby an Order to Show Cause. Kirby currently holds a County Substitute certificate.

The Order to Show Cause was mailed to Kirby by regular and certified mail on June 26, 2000. The Order provided that an Answer must be filed within 20 days. Kirby filed an Answer to the Order on August 18, 2000. In that response, Kirby admitted to the charges in the Order to Show Cause. She argued that her certificate should not be revoked or suspended because she was wrongfully accused of possession of cocaine. (Answer, ¶ 7). She said that while she was talking to an acquaintance, he was arrested for possession of drugs she did not know he had. She was arrested also. Kirby said she accepted a plea bargain because she was afraid of losing her job and her children. (Answer, ¶7). She also stated that this was an isolated offense and that after her sentence she began volunteering with youth. She claimed that that volunteer work led to her current goal to become an educator. (Answer, ¶ 7).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on October 5, 2000, Kirby was mailed a hearing notice by regular and certified mail. The notice explained that since it appeared no

material facts were in dispute regarding her conviction, respondent 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. It also explained that upon review of the charges against her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her disqualifying offense warranted action against her certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. The certified mail return receipt was signed and returned. The regular mail copy was not returned. Kirby did not respond to the Hearing Notice. Since Kirby failed to respond to the hearing notices, the State Board of Examiners considered her Answer as the only responsive pleading in the hearing process.

At its meeting of December 7, 2000, the State Board of Examiners reviewed the charges and papers Kirby filed in response to the Order to Show Cause. After review of the response, the Board of Examiners determined that no material facts related to Kirby's offense were in dispute since Kirby admitted that she had been convicted of the drug offense mentioned in the Order to Show Cause.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Kirby's disqualification, which was predicated on the same offense as was set forth in the Order to Show Cause, represents just cause to act against her certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

In enacting the Criminal History Review statute, N.J.S.A. 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 to them. In 1989 the Legislature specifically amended the statute to include all convictions concerning controlled dangerous substances as disqualifying offenses. See, N.J.S.A.

18A:6-7.1b. This amendment was a clear recognition on the part of the Legislature that individuals with such drug convictions should not be permitted to be in contact with school-aged children. The consistent and long-standing policy of this State is to eliminate the use of illegal drugs. See, In the Matter of the Tenure Hearing of David Earl Humphreys, 1978 S.L.D. 689. To that end, the State and the schools herein have engaged in extensive educational efforts to warn the citizenry of the perils of illicit drugs. See, In the Matter of the Certificate of Barbara Corwick, OAL Dkt. No. EDE 3562-87, State Board of Examiners decision (March 24, 1988) Those who violate this deep-rooted policy, *whether by the use of drugs or their manufacture and distribution*, endanger the public welfare; they cannot be entrusted with the responsibility of caring for school aged pupils. Accordingly, the State Board of Examiners finds that the Kirby's disqualification from service in the public schools of this State because of her conviction for possession of cocaine on or near school property provides just cause to take action against Kirby's certificate.

That strong policy statement on the part of the Legislature set forth in N.J.S.A. 18A:6-7.1b also offers guidance to the State Board of Examiners as to the appropriate sanction in this matter. 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 license that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold herself out as a teacher. Because the Legislature considers Kirby's offense so significant, the State Board of Examiners in this matter believes that the appropriate sanction for her disqualification is the revocation of her certificate to teach.

Moreover, notwithstanding Kirby's contentions of rehabilitation, this is not the proper context for such considerations. The purpose of this proceeding is "to permit the individual

certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation.” See, In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners, 96 N.J.A.R. 2D (EDE) 1, 16 aff’d App. Div. Dkt. No. A-1246-96T5 (September 9, 1997) citing In the Matter of the Revocation of the Teaching Certificate of James Noll, State Bd. of Examiners’ decision (February 7, 1990). Thus, the fact that Kirby has engaged in many volunteer programs working with youth and warning them of the perils of drugs, while a step in the right direction, has no bearing on the decision the Board of Examiners must make with regard to her certification.

Accordingly, it is therefore ORDERED that Marilyn Kirby’s County Substitute certificate be revoked on this 7th day of December 2000. It is further ORDERED that Kirby return her certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: March 29, 2001

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

IBG:MZ:kb:Marilyn Kirby