

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS  
HENRY ALSTON : ORDER OF REVOCATION  
\_\_\_\_\_: DOCKET NO: 0304-171

At its meeting of December 6, 2001, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that respondent Henry Alston was convicted in 1989 for first-degree rape and in June 2000 for conspiracy to sell a controlled substance, conspiracy to possess a controlled substance and possession of marijuana. As a result of those convictions, Alston was disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et seq. Alston is the holder of a Teacher of Elementary School Certificate of Eligibility issued in October 2000.

Alston did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above-mentioned information, at its December 2001 meeting, the State Board of Examiners voted to issue Alston an Order to Show Cause.

The Board of Examiners mailed Alston the Order to Show Cause by regular and certified mail on April 5, 2002. Neither copy was returned. The Order provided that an Answer to the Order must be filed within 20 days. Alston filed an Answer on April 22, 2003.

In his Answer, Alston asserted that he was coerced into giving false testimony regarding the events and pled guilty to rape in a plea bargain in order to avoid the possibility of going to prison since “my freedom was more important than proving I was innocent.” (Answer, p.1.) He also claimed that on the second charge, he was in a car with some family and friends when the police stopped the car and searched it. The police found drugs in the car and since everyone denied the drugs were theirs, all of the people in the car were charged. While Alston admitted

his two convictions, he also said that his experiences made him the person he is today and someone who could reach children, especially those from urban areas. (Answer, p. 2).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on July 17, 2003, the Board of Examiners mailed Alston a hearing notice by regular and certified mail. The notice explained that since it appeared no material facts were in dispute, Alston 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 him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his disqualifying offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Alston did not claim the certified mail copy but the regular mail copy was not returned.

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Alston's disqualifying offenses constitute conduct unbecoming a certificate holder. Since Alston failed to respond to the hearing notice, the State Board of Examiners considered his Answer as the only responsive pleading in the hearing process.

At its meeting of December 11, 2003, the State Board of Examiners reviewed the charges and papers Alston 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 Alston's offense were in dispute since he never denied that he had committed the offenses nor did he deny that he had been disqualified because of them. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. N.J.A.C. 6:11-3.6(a)1.<sup>1</sup>

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<sup>1</sup> On January 20, 2004, the State Board of Education adopted a new administrative code governing professional licensure and standards. N.J.A.C. 6A:9-1 et seq. Although this decision was mailed after the effective date of the new code, the Board of Examiners' decision in this case predates the effective date of the new code and was therefore decided under the old code. All citations in this decision therefore are to the prior administrative code.

The State Board of Examiners must now determine whether Alston's disqualification, which was predicated on the same offenses as were set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

In this case, Alston has a conviction for rape. Unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), *aff'd*. 131 N.J.L. 326 (E & A 1944). Accordingly, the State Board of Examiners finds that Alston's disqualification from service in the public schools of this State because of his conviction for rape provides just cause to take action against his certificate.

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. Individuals convicted of a crime of violence fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing policy of holding teachers to a higher standard. "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.

Furthermore, Alston has not one but two disqualifying convictions. Even without his conviction for rape, his drug conviction alone would serve to disqualify him from public school teaching. N.J.S.A. 18A:6-7.1(b). In 1989, the Legislature specifically amended the Criminal History Review statute, N.J.S.A. 6-7.1 et seq., 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 Alston's disqualification from service in the public schools of this State because of his conviction for conspiracy to sell a controlled substance, conspiracy to possess a controlled substance and possession of marijuana also provides just cause to take action against his certificate.

That strong policy statement on the part of the Legislature set forth in N.J.S.A. 18A:6-7.1 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 himself out as a teacher. Because the Legislature considers Alston's offenses so significant, the State Board of Examiners in this matter believes that the appropriate sanction for his disqualification is the revocation of his certificate to teach. See In the Matter of the Revocation of the Teaching Certificate of Patricia Rector, Agency Dkt. No. 19-02 (St Bd. of Education,

August 7, 2002) (affirming the decision of the State Board of Examiners to revoke Rector's teaching certificate on the basis of her disqualification pursuant to N.J.S.A. 18A:6-7.1.)

Accordingly, it is therefore ORDERED that Henry Alston's Teacher of Elementary School Certificate of Eligibility be revoked on this 11th day of December 2003. It is further ORDERED that Alston return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

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Joan E. Brady, Secretary  
State Board of Examiners

Date of Mailing: April 20, 2004

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