

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
RICHARD DAVIS : ORDER OF REVOCATION
_____ : DOCKET NO: 680-02/02-322

At its meeting of February 21, 2002, the State Board of Examiners reviewed a decision the Commissioner of Education had forwarded that had dismissed Richard Davis from his tenured position with the Board of Education of Wyckoff for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Richard Davis, Dkt No. 14-1/01 (Commissioner's Decision, October 12, 2001). Davis currently holds a School Business Administrator certificate issued in May 1981.

This case originated on January 9, 2001, when the Wyckoff Board of Education certified tenure charges against respondent, Richard Davis. The district charged him with unbecoming conduct for embezzling \$1.7 million from the school district.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Margaret M. Hayden scheduled a hearing for June 2001. Prior to the hearing date, on June 5, 2001, the district filed a motion for summary decision. Davis did not answer the motion but advised the ALJ by letter dated June 12, 2001, that he was irrevocably resigning from his tenured position in the district.

In her Initial Decision, the ALJ found that on May 3, 2001, Davis had pled guilty in federal court to embezzling \$1.7 million from the district. (Initial Decision, slip op. at 4-5.) ALJ Hayden also found that the district had proven Davis' unbecoming conduct by a preponderance of the evidence and concluded that Davis' dismissal from his tenured position was the appropriate penalty. (initial Decision, slip op. at 6.) On October 12,

2001, the Commissioner affirmed the Initial Decision for the reasons expressed therein. (Commissioner's Decision, slip op. at 8.) The Commissioner then transmitted the matter to the State Board of Examiners for appropriate action regarding Davis' certificate.

Thereafter, on February 21, 2002, the State Board of Examiners issued Davis an Order to Show Cause as to why his certificate should not be suspended or revoked. The Order was predicated on his embezzlement conviction and the unbecoming conduct proven in the tenure proceeding.

The Board sent Davis the Order to Show Cause by regular and certified mail on April 8, 2002. The Order provided that Davis must file an Answer within 20 days. Davis signed and returned the certified mail copy. The regular mail copy was not returned. As Davis did not file an Answer, the Board sent him a second notice by regular and certified mail on March 12, 2003. Once again, the certified mail receipt was returned but the regular mail copy was not. Davis did not file a response.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Davis' conduct and conviction constitute conduct unbecoming a certificate holder. Since Davis did not respond to the Order to Show Cause, the State Board of Examiners had no responsive pleading to consider in the hearing process. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding. N.J.A.C. 6:11-3.6(a)1.¹ Since Davis' conduct, which was predicated on the same conviction as was set forth in the Order to Show Cause, is

¹ 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.

admitted, the Board of Examiners must now decide whether that constitutes a sufficient basis to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners 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. 6:11-3.4. Furthermore, 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). “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. There can be no dispute that Davis’ criminal conviction for embezzlement negates any claim he can have to being a role model for students. Moreover, Davis’ acts are inexcusable for any individual, teacher or not. Thus, the only proper response to Davis’ breach is revocation.

Accordingly, it is therefore ORDERED that Richard Davis’ School Business Administrator certificate be revoked on this 12th day of June 2003. It is further ORDERED that Davis return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, PO Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Michael K. Klavon, Acting Secretary
State Board of Examiners

Date of Mailing: December 29, 2004

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