

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CREDENTIAL OF : STATE BOARD OF EXAMINERS
ALBERT DIEMIDIO : ORDER OF REVOCATION
_____ : DOCKET NO: 0506-278

At its meeting of May 4, 2006, the State Board of Examiners reviewed information received from the Office of Criminal History Review (OCHR) indicating that respondent Albert DiEmidio was arrested in 2001 for theft, forgery and receiving stolen property. DiEmidio did not comply with the OCHR's request for additional information about his arrest. As a result of his failure to provide additional information, DiEmidio was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* DiEmidio currently holds a County Substitute credential, issued in October 2004.

DiEmidio did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the State Board of Examiners voted to issue DiEmidio an Order to Show Cause at its meeting of May 4, 2006. The Board formally adopted its written Order to Show Cause on June 8, 2006.

The Board sent DiEmidio the Order to Show Cause by regular and certified mail on June 25, 2006. Neither the certified mail copy nor the regular mail copy was returned. The Order provided that DiEmidio must file an Answer within 30 days. DiEmidio did not file a response.

Thereafter, on August 2, 2006, the Board sent DiEmidio a second notice by regular and certified mail providing him an additional 15 days in which to file an Answer. Again, the regular mail copy was not returned. The certified mail copy was returned as unclaimed. The notice explained that if he did not file a response, the allegations in the Order to Show Cause would be deemed admitted and the Board of Examiners would decide the matter based on the evidence before it. Once again, DiEmidio did not file an Answer.

At its meeting of November 2, 2006, the State Board of Examiners reviewed the charges in the Order to Show Cause. Since there was no response, the Board of Examiners determined that no material facts related to DiEmidio's arrest were in dispute since he had never denied that he had been arrested nor did he deny the resulting disqualification. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The issue before the State Board of Examiners in this matter, therefore, is whether DiEmidio's disqualification, which was predicated on the same arrest and failure to provide information as was set forth in the Order to Show Cause, represents just cause to act against his credential pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

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 to them. Individuals convicted of a crime of theft, forgery and receiving stolen property fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers must serve as role models for 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. Although DiEmidio may not have been convicted of these offenses, his failure to provide further information regarding his arrest and the disposition of his criminal case, does not speak well of his fitness as a role model for children.

Furthermore, 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 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Accordingly, the State Board of Examiners finds that DiEmidio's disqualification from service in the public schools of this State because of his failure

to provide information regarding his arrest for theft, forgery and receiving stolen property provides just cause to take action against his credential.

That 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 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 credential 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 considers DiEmidio's conduct so significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of his credential.

Accordingly, on November 2, 2006, the Board of Examiners voted to revoke DiEmidio's credential. On this 7th day of December 2006, the Board formally adopted its written to revoke and it is therefore ORDERED that Albert DiEmidio's County Substitute credential be revoked effective this 7th day of December 2006. It is further ORDERED that DiEmidio return his credential to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: DECEMBER 11, 2006

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