

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
DANIEL MULLAY : ORDER OF REVOCATION
_____ : DOCKET NO: 0506-215

At its meeting of January 19, 2006, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that respondent Daniel Mullay was convicted in 2005 of lewdness. As a result of such conviction, Mullay was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Mullay currently holds Teacher of English and Teacher of Speech and Dramatics certificates, both issued in June 1979.

Mullay 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 Mullay an Order to Show Cause at its meeting of January 19, 2006. It formally adopted the written Order to Show Cause on March 30, 2006.

The Board sent Mullay the Order to Show Cause by regular and certified mail on April 7, 2006. The Order provided that Mullay must file an Answer within 30 days. Mullay filed an Answer on June 19, 2006.

In his Answer, Mullay neither admitted nor denied any of the allegations of the Order to Show Cause. (Answer, ¶¶ 2-5). In an affidavit attached to his Answer, Mullay stated that while in a wooded area of Millburn, NJ, he was approached by a single male who propositioned him after exchanging pleasantries. (Affidavit, ¶ 5). Mullay averred that he said no and later, after additional small talk, the male approached him in an aggressive manner. (Affidavit, ¶ 5). When Mullay took his hands out of his pockets, he was placed under arrest. (Affidavit, ¶ 5). Mullay claimed that he never made any inappropriate advances, removed any clothing or exposed himself. (Affidavit, ¶ 6). He stated that this was his first and only arrest and added that he only pled guilty because he had no benefit of counsel and believed this would resolve the matter

quickly. (Affidavit, ¶¶ 7, 9). Finally, Mullay asserted that it was “manifestly unfair to revoke or suspend my teaching certifications due to my arrest and erroneous guilty plea based on a lack of legal counsel, misunderstanding of the seriousness of the charges, and the collateral consequences.” (Affidavit, ¶ 11).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on July 21, 2006, the Board sent Mullay a hearing notice by regular and certified mail. The notice explained that since it appeared no material facts were in dispute, Mullay 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 certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Mullay filed a response to the hearing notice on August 19, 2006. That response consisted of the same affidavit he had previously submitted as well as an affidavit from a character reference.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Mullay’s disqualifying offense constitutes conduct unbecoming a certificate holder. At its meeting of September 21, 2006, the State Board of Examiners reviewed the charges and papers Mullay 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 Mullay’s offense were in dispute since he never denied that he had been convicted of the offense nor did he deny that he had been disqualified because of it. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*.

The State Board of Examiners must now determine whether Mullay’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 his certificates 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 lewdness fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers should serve as role models for their 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.

In this case, Mullay has a conviction for lewdness. A teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain his certificate. *In re Grossman*, 127 *N.J. Super.* 13, 30 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). 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 Mullay's disqualification from service in the public schools of this State because of his conviction for lewdness provides just cause to take action against his certificates.

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 certificate 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 Mullay's offense so

significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of Mullay's certificates.

Accordingly, on September 21, 2006, the Board voted to Mullay's certificates. On this 2nd day of November 2006, the Board formally adopted its written decision and it is therefore ORDERED that Daniel Mullay's Teacher of English and Teacher of Speech and Dramatics certificates be revoked effective this day. It is further ORDERED that Mullay return his certificates 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: NOVEMBER 8, 2006

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