

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
NICHOLAS PROVANZANA : ORDER OF REVOCATION
_____ : DOCKET NO: 0809-184

At its meeting of February 23, 2009, the State Board of Examiners reviewed information received from the Ocean County Prosecutor's Office indicating that on January 21, 2003, Nicholas Provanzana had pled guilty to one count of Offensive Touching. Provanzana was sentenced to five years probation, 60 days in prison and fined. Provanzana currently holds a Teacher of Music certificate, issued in October 1998. Upon review of the above information, at its March 31, 2009, meeting, the State Board of Examiners voted to issue Provanzana an Order to Show Cause.

The Board sent Provanzana the Order to Show Cause by regular and certified mail on April 1, 2009. The certified mail receipt was signed and returned. The regular mail copy was not returned. The Order provided that Provanzana must file an Answer within 30 days. Provanzana did not file a response. Thereafter, on May 19, 2009, the Board sent Provanzana another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. Neither copy was returned. Provanzana did not respond to the second notice either.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on July 7, 2009, the Board sent Provanzana a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Provanzana 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 offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Once again, neither copy was returned nor did Provanzana file a response.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether the conduct underlying Provanzana's conviction constitutes conduct unbecoming a certificate holder. Since Provanzana failed to respond to the Order to Show Cause or the hearing notice, at its meeting of October 22, 2009, the State Board of Examiners considered only the allegations in the Order to Show Cause. The Board of Examiners determined that no material facts related to Provanzana's offense were in dispute since he never denied that he had pled guilty to the offense charged or had been sentenced accordingly. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The State Board of Examiners must now determine whether Provanzana's conviction, as set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds 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. 6A:9-17.5*. "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. Moreover, the Commissioner has long held that

teachers serve as role models for their students. Provanzana's act of Offensive Touching is inexcusable and certainly prevents him from laying claim as a role model to students.

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). In this instance, Provanzana's conviction for Offensive Touching demonstrates egregious behavior that warrants revocation.

Accordingly, on October 22, 2009, the Board of Examiners voted to revoke Nicholas Provanzana's Teacher of Music certificate. On this 2nd day of December 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Provanzana's certificate be effective immediately. It is further ORDERED that Provanzana return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing:

Appeals may be made to the Commissioner of Education pursuant to the provisions of N.J.S.A. 18A:6-38.4.

RRH:MZ: