

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JAMES DOUGHERTY : ORDER OF REVOCATION
_____ : DOCKET NO: 0708-300

At its meeting of July 17, 2008, the State Board of Examiners reviewed information the Office of Criminal History Review had forwarded indicating that James Dougherty was convicted in May 2008 of Failure to Give Controlled Dangerous Substance (CDS) to Police. As a result of such conviction, Dougherty was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Dougherty did not appeal the disqualification before the Commissioner of Education. Dougherty currently holds a Teacher of Biological Science Certificate of Eligibility With Advanced Standing, issued in January 2006. Upon review of the above information, at its September 11, 2008 meeting, the State Board of Examiners voted to issue Dougherty an Order to Show Cause.

The Board sent Dougherty the Order to Show Cause by regular and certified mail on October 7, 2008. The Order provided that Dougherty must file an Answer within 30 days. Dougherty filed an Answer on October 27, 2008. In that Answer, Dougherty claimed that when he was pulled over for a traffic stop it was discovered that the car he was driving contained a CDS. (Answer, p. 1.) Dougherty claimed he had no knowledge that the CDS was there and was allowed to plead guilty to a lesser charge of failure to disclose evidence to a law officer. (Answer, p. 1.) He stated that he had no idea his guilty plea would affect his career as a teacher in New Jersey. (Answer, p. 1.) Dougherty added that he had taught in a remote village in Alaska and as a substitute teacher in New Jersey. (Answer, p. 1.)

Thereafter, pursuant to *N.J.A.C.* 6A:9-17.7(e), on November 12, 2008, the Board sent Dougherty a hearing notice by regular and certified mail. The notice explained that since it appeared no material facts were in dispute regarding his offense, he 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 and provided cause for the Board to take action against his certificate. 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. Dougherty was also offered the opportunity to appear before the Board and provide testimony on the sanction issue. Dougherty responded to the Hearing Notice but did not request to appear before the Board. In his response, Dougherty claimed that he did not know there was cocaine in his car but since that knowledge would be imputed to him, he accepted a plea. (Hearing Response, p. 1.) He stated that he was “not found guilty of possession, use, distribution, solicitation, or the manufacture of any CDS.” (Hearing Response, p. 1.) Dougherty also spoke about his passion for teaching and added that when he was convicted of his offense he was not a teacher. (Hearing Response, pp. 2-3.)

At its meeting of March 31, 2009, the State Board of Examiners reviewed the charges and papers Dougherty 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 Dougherty’s offense were in dispute since he never denied that he had plead guilty to 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). 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 Dougherty'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 certificate 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. In 1989, the Legislature specifically amended the statute to include all convictions concerning controlled dangerous substances as disqualifying offenses. *See N.J.S.A.* 18A:6-7.1(b). 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 its schools 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 Dougherty's disqualification from service in the public schools of this State because of his conviction for Failure to Give CDS to Police 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(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 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 Dougherty's offense 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 Ed., August 7, 2002) (affirming the decision of the State Board of Examiners to revoke Rector's teaching certificate on the basis of the disqualification pursuant to *N.J.S.A.* 18A:6-7.1) *rev'd on other grounds*, No. A-0454-02T3 (App. Div. January 3, 2004).

Accordingly, on March 31, 2009 the Board of Examiners voted to revoke James Dougherty's Teacher of Biological Science Certificate of Eligibility With Advanced Standing. On this 11th day of May 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Dougherty's certificate be effective immediately. It is further ORDERED that Dougherty 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:6-28.

RRH:MZ: