

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
NICHOLAS POLISENO : ORDER OF REVOCATION
_____ : DOCKET NO: 0809-180

At its meeting of May 11, 2009, the State Board of Examiners reviewed information received from the Bergen County Prosecutor's Office and the Office of Criminal History Review indicating that respondent Nicholas Polisenno pled guilty in July 2008 to one count of Computer Theft, 3rd Degree. As a result of the conviction, Polisenno was sentenced to three years' probation. He also was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Polisenno currently holds a Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing, issued in March 2008.

Polisenno 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 Polisenno an Order to Show Cause at its meeting of June 22, 2009.

The Board sent Polisenno the Order to Show Cause by regular and certified mail on August 13, 2009. The Order provided that Polisenno must file an Answer within 30 days. Neither the certified mail copy nor the regular mail copy was returned. Polisenno did not file a response. Thereafter, on October 14, 2009, the Board sent Polisenno another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. Polisenno responded on October 27, 2009. In his Answer, Polisenno admitted to pleading guilty to Computer Theft. (Answer, ¶ 2.) He added that the incident was his "first and only contact with law enforcement." (Answer, ¶ 3.) He noted that he had been successful on probation and that the State had not sought any incarceration since it recognized that his "conduct was an aberration and would not occur again." (Answer, ¶¶ 3, 4.) Polisenno recognized that he should be punished

but believed that a suspension was appropriate since he was twenty-four years old and hoped to teach again in the future. (Answer, ¶¶ 5, 6.)

Thereafter, pursuant to *N.J.A.C.* 6A:9-17.7(e), on November 5, 2009, the Board sent Polisenno a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Polisenno 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. Polisenno was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Neither mail copy was returned. Polisenno did not file a response. However, before the matter was scheduled for hearing before the State Board of Examiners, Polisenno submitted character references and other certificates and recognition letters.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Polisenno's conviction and subsequent disqualification constitute conduct unbecoming a certificate holder. At its meeting of March 25, 2010, the State Board of Examiners reviewed the charges, Polisenno's Answer as well as the character references and other documents he submitted. After review of the response, the Board of Examiners determined that no material facts related to Polisenno's offense were in dispute since he admitted that he had committed the offense as outlined in the Order to Show Cause. 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 Polisenó's conviction and resulting disqualification, as set forth in the Order to Show Cause, represent just cause to act against his certificates pursuant to *N.J.A.C.* 6A:9-17.5. The Board finds that they do.

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 dishonest and poor role models. Individuals convicted of a crime such as Computer Theft fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing belief that teachers must 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. Clearly Polisenó's actions here are not those of a role model.

It is well established that the State Board of Examiners has the right to revoke a certificate where the teacher was involved in criminal activities, even if the activities were unrelated to the classroom. *See Cox v. State Board of Examiners*, (App. Div. Docket No. A-3527-81T3) (November 18, 1983); *State Board of Examiners v. Krupp*, 3 *N.J.A.R.* 285 (1981). In this case, Polisenó has a conviction for a crime involving dishonesty. 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 (App. Div.), cert. denied, 65 *N.J.* 292 (1974). Moreover, 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).

The 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 Polisenó's offense so significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of Polisenó's teaching certificate.

Accordingly, on March 25, 2010 the Board of Examiners voted to revoke Nicholas Polisenó's Teacher of Health and Physical Education Certificate of Eligibility With Advanced Standing. On this 29th day of April 2010 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Nicholas Polisenó's certificate be effective immediately. It is further ORDERED that Polisenó 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:th