

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
ROBERT SPIVEY, JR. : ORDER OF REVOCATION
_____ : DOCKET NO: 0809-177

At its meeting of February 23, 2009, the State Board of Examiners reviewed information from the Office of Criminal History Review and the Essex County Prosecutor's Office indicating that Robert Spivey, Jr. was convicted in March 2008 of Conspiracy to Possess CDS With Intent to Distribute and Possession and Distribution of a CDS in a School Zone. As a result of the conviction, Spivey was disqualified from public service pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Spivey did not appeal the disqualification before the Commissioner of Education. Spivey currently holds a Teacher of Drafting and Design Technology Certificate of Education Certificate of Eligibility, issued in May 1997. Upon review of the above information, at its March 31, 2009 meeting, the State Board of Examiners voted to issue Spivey an Order to Show Cause.

The Board sent Spivey the Order to Show Cause by regular and certified mail on April 1, 2009. The Order provided that Spivey must file an Answer within 30 days. After Spivey did not respond to the Order and both copies came back as undeliverable, the Board secured a new address for him. Thereafter, on May 19, 2009, the Board sent Spivey the Order at his new address. The certified mail copy was returned as unclaimed and the regular mail copy was not returned. On July 30, 2009, the Board sent Spivey a second notice by regular and certified mail providing him an additional 15 days in which to file an Answer. Spivey filed an Answer on August 10, 2009. In that Answer, Spivey claimed that he could "be an example to all, especially inner city populations on what to do when one makes a mistake in life." (Answer, ¶ 2.) He

added that he could still be an asset to education “as I once was some time ago.” (Answer, ¶ 3.) Finally, Spivey stated that he was still “highly recommended in the field of teaching/architecture and drafting design by my professional colleagues in the workforce.” (Answer, ¶ 4.)

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on October 22, 2009, a hearing notice was mailed by regular and certified mail to Spivey. The notice explained that it appeared that no material facts were in dispute. Thus, Spivey 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. Spivey was also provided the opportunity to appear before the Board to testify on the sanction issue. The certified mail return receipt card was signed and returned. The regular mail copy was not returned. Spivey did not file a response.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Spivey’s disqualifying offense constitutes conduct unbecoming a certificate holder. Since Spivey failed to respond to the hearing notice, the State Board of Examiners considered his Answer as the only responsive pleading in the hearing process.

At its meeting of January 7, 2010, the State Board of Examiners reviewed the charges and papers Spivey 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 Spivey’s offense were in dispute since Spivey did not deny 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). 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 Spivey's conduct 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 dangerous. 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 Spivey's disqualification from service in the public schools of this State because of his conviction for Conspiracy to Possess CDS With Intent to Distribute and Possession and Distribution of a CDS in a School Zone 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 Spivey'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 January 7, 2010 the Board of Examiners voted to revoke Robert Spivey Jr.'s Teacher of Drafting and Design Technology Certificate of Eligibility. On this 25th day of March 2010 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Spivey's certificate be effective immediately. It is further ORDERED that Spivey 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.