

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
TROY ALLEN RUSHING : ORDER OF REVOCATION
_____ : DOCKET NO: 1011-119

At its meeting of October 28, 2010, the State Board of Examiners (Board) reviewed information received from the Monroe Township School District (Monroe), the Middlesex County Prosecutor's Office (MCPO) and the Office of Criminal History Review (OCHR) regarding Troy Allen Rushing. Initially, Monroe reported that Rushing had been convicted of violating a restraining order and had failed to report his arrest to the district within 14 calendar days, as required by *N.J.A.C. 6A:9-17.1(c)*. Subsequently, Monroe notified the Board that Rushing had violated the district's policies against corporal punishment and inappropriate staff conduct by physically removing a student from his classroom by pulling the student by the ear. In August 2010, the MCPO reported that Rushing pled guilty in July 2010 to Simple Assault arising from the incident where he grabbed the student's ear. In September 2010, the OCHR notified the Board that in June 2010, Rushing was convicted in Pennsylvania of Stalking. As a result of that conviction, Rushing was disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Rushing currently holds a Teacher of Health and Physical Education certificate, issued in July 1985. Rushing did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the Board voted at its meeting of December 9, 2010 to issue Rushing an Order to Show Cause why his certificate should not be revoked.

The Board sent Rushing the Order to Show Cause by regular and certified mail on December 16, 2010. The Order provided that Rushing must file an Answer within 30 days. Rushing responded on January 11, 2011. Since it appeared that no material facts were in dispute, the Board sent Rushing a Hearing Notice, providing him the opportunity to file a written submission on the issue of whether his conduct provided just cause for the Board to take action against his certificate and, if so, the appropriate sanction. Prior to the hearing, the MCPO provided the Board with a copy of the Judgment of Conviction from Rushing's guilty plea to the Simple Assault charge. As a result of his Simple Assault conviction,

Rushing was sentenced to a jail term of 90 days, fined and ordered to forfeit his public position. Rushing was also “forever disqualified from holding any position of honor, trust or profit under this State or any of its administrative or political subdivisions” pursuant to *N.J.S.A. 2C:51-2d*. After receiving the new information, at its meeting of July 28, 2011, the Board voted to issue Rushing an Amended Order to Show Cause why his certificate should not be revoked.

The Board sent Rushing the Amended Order to Show Cause by regular and certified mail on August 1, 2011. The Order provided that Rushing must file an Answer within 30 days. The certified mail copy was returned as “Unclaimed” and the regular mail copy was not returned. Rushing did not file a response. Thereafter on October 7, 2011, the Board sent Rushing another notice by certified and regular mail providing him an additional 15 days to respond to the Amended Order to Show Cause. Rushing responded on October 14, 2011. In that Answer, Rushing denied that he had not told Monroe about his arrest for violating a Restraining Order within 14 days of his arrest. (Answer, ¶ 3). He added that he was put on a paid leave of absence pending the investigation of alleged inappropriate discipline of a student. Rushing noted that the Division of Children and Families Institutional Abuse Investigation Unit found the charges unfounded. (Answer, ¶ 3). Rushing claimed that he pled guilty to Simple Assault to avoid the risk of being convicted of Official Misconduct which was a felony that carried a possible jail term of five years. (Answer, ¶ 4). Rushing stated that if the MCPO had not threatened him with an indictment for Official Misconduct if he did not plead guilty to the Simple Assault charge, he would have contested the matter. (Answer, ¶ 6). He noted that he did not wish to teach in New Jersey but wanted to avoid revocation so that no action would be taken against him in Pennsylvania where he is also licensed. (Answer, ¶ 6). Rushing admitted that he had pled guilty to a charge of Stalking in Pennsylvania in June 2010 but noted that it was a misdemeanor charge there. (Answer, ¶ 5). He added that he had a motion pending in Pennsylvania for post-conviction collateral relief so that his charge would be amended or he would be re-sentenced to another crime as he did not realize that a conviction for Stalking would lead to revocation in New Jersey. (Answer, ¶ 5). Rushing also stated that he had informed his employer of all events related to his arrests and “absolutely did not engage in corporal punishment.” (Answer, ¶ 7).

Finally, Rushing asked for a hearing before the Board. (Answer, ¶ 8). In addition to his Answer, Rushing also submitted a copy of his motion for post-conviction collateral relief that he had filed in Pennsylvania.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on November 16, 2011 the Board sent Rushing a hearing notice by regular and certified mail. Since Rushing had not disputed that he had been convicted of a disqualifying offense or had been permanently barred for holding a position of public employment, the notice explained that it appeared that no material facts were in dispute. Thus, Rushing 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, as well as arguments with regard to the appropriate sanction in the event that the Board found just cause 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 Board would determine if his disqualifying offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. Rushing was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Rushing did not submit a written response but in a letter dated November 22, 2011, he asked to appear before the Board.

In his testimony, Rushing argued that revocation of his certificate should not be based on his Pennsylvania conviction for Stalking as he was currently negotiating there for a lesser plea or one to a different crime. He stated that the judge in Pennsylvania wanted him to retain his license as he had worked successfully for 25 years. Rushing noted that he was appealing the judgment because the facts for the crime did not exist and asked the Board to wait until that matter was resolved so he could resume his career in Pennsylvania.

The threshold issue before the Board in this matter is whether Rushing's conviction and subsequent disqualification constitute conduct unbecoming a certificate holder. At its meeting of March 1, 2012, the Board considered the allegations in the Order to Show Cause, Rushing's Answer and submissions, and his testimony. The Board determined that no material facts related to Rushing's offense were in dispute since he never denied that he had been convicted of the offense charged and sentenced accordingly. Thus, the Board 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 Board must now determine whether Rushing's conviction and resulting disqualification, as set forth in the Order to Show Cause, represent just cause to act against his certificate 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 a danger. Individuals convicted of a crime such as Stalking, whether by jury verdict or guilty plea, 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, Rushing's conviction indicates his actions here are not those of a role model.

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 Board 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 Rushing's offense so significant, the Board believes that the only appropriate sanction in this case is the revocation of Rushing's certificate.

Rushing argues that if he obtains post-conviction relief in Pennsylvania, his Stalking conviction would be amended and he would no longer have a disqualifying offense on his record, thereby allowing him to retain his New Jersey certificate. Rushing conveniently forgets that he has an additional conviction on his record in New Jersey, for Simple Assault. Moreover, while that might not be a disqualifying offense pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.*, because his actions touched on his

employment, the court ordered that he forfeit his public employment and be forever barred from holding public office pursuant to *N.J.S.A. 2C:51-2d*. That permanent bar issued by the court speaks volumes about Rushing's fitness to retain his certificate. Moreover, pursuant to *N.J.A.C. 6A:9-17.5*, the Board "may revoke or suspend the certificate(s) of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Other just cause shall include, but not be limited to, offenses within the terms of the forfeiture statute, *N.J.S.A. 2C:51-2*, or the disqualification statute, *N.J.S.A. 18A:6-7.1*." Clearly, the Board is not bound by Rushing's disqualification status in making its determination as to whether he should retain his teaching certificate. In this case, there can be no question that revocation is the appropriate sanction.

Accordingly, on March 1, 2012, the Board voted to revoke Troy Allen Rushing's Teacher of Health and Physical Education certificate. On this 2nd day of April 2012 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Troy Allen Rushing's certificate be effective immediately. It is further ORDERED that Rushing 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*.