

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
BRIAN CUMMINS : ORDER OF REVOCATION
_____ : DOCKET NO: 1011-201

At its meeting of November 1, 2011, the State Board of Examiners (Board) reviewed information received from the Sussex County Prosecutor's Office (SCPO) indicating that on October 26, 2009, Brian Cummins pled guilty to Theft By Unlawful Taking. On December 18, 2009, Cummins was sentenced to two years' probation and ordered to pay restitution of \$37,820.92. Cummins currently holds a Teacher of the Handicapped certificate, issued in May 1975, a Teacher of Elementary School certificate, issued in February 1982, a Teacher of Driver Education certificate, issued in January 1990 and a Student Personnel Services certificate, issued in July 1998. Upon review of the above information, at its December 16, 2011 meeting, the Board voted to issue Cummins an Order to Show Cause.

The Board sent Cummins the Order to Show Cause by regular and certified mail on January 24, 2012. The Order provided that Cummins had 30 days to respond. After receiving an extension of time in which to respond, Cummins filed his Answer on March 26, 2012. In that Answer, Cummins admitted that he had pled guilty to Theft By Unlawful Taking and had been sentenced to two years' probation and ordered to pay restitution. (Answer, ¶¶ 3-4). Cummins added that he reserved the right to apply for an expungement of his conviction at the appropriate time and to apply for certification after revocation if the expungement was granted. (Answer, p. 2).

Thereafter, pursuant to *N.J.A.C.* 6A:9-17.7(e), on April 11, 2012, the Board sent Cummins a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Cummins 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 determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Cummins' offenses warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Cummins was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. The certified mail receipt was signed and returned and the regular mail copy was not returned. Cummins did not respond.

The threshold issue before the Board in this matter is whether Cummins' conviction constitutes conduct unbecoming a certificate holder. At its meeting of June 21, 2012, the Board considered the allegations in the Order to Show Cause and Cummins' Answer. The Board determined that no material facts related to Cummins' offense were in dispute since he admitted that he had been convicted 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 Cummins' conviction, as set forth in the Order to Show Cause, provides just cause to act against his certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

The Board 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. Clearly, a teacher convicted of Theft By Unlawful Taking cannot claim status as a role model to anyone. Indeed, the court agreed, ordering a lengthy probationary term and immediate restitution. Thus, the Board believes that the only appropriate sanction in this case is the revocation of Cummins’ certificates. *In the Matter of the Certificates of Kevin Jordan*, Dkt. No. A-0155-08T3 (App. Div. October 5, 2009) (Unpublished Opinion).

Accordingly, on June 21, 2012, the Board voted to revoke Cummins’ Teacher of the Handicapped, Teacher of Elementary School, Teacher of Driver Education and Student Personnel Services certificates. On this 26th day of July 2012 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Brian Cummins’ certificates be effective immediately. It is further ORDERED that Cummins return his certificates 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