

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
BRENDAN KENNY : ORDER OF SUSPENSION
_____ : DOCKET NO: 1112-236

At its meeting of July 26, 2012, the State Board of Examiners (Board) reviewed information received from the staff of the Office of Licensure and Credentials regarding Brendan Kenny. On July 15, 2011, Kenny was indicted in Massachusetts on nine counts of Rape and Abuse of Child and three counts of Furnishing Liquor to Minors. Kenny currently holds a Teacher of Elementary School certificate, issued in August 1993. Upon review of the above information, at its meeting of September 21, 2012, the Board voted to issue Kenny an Order to Show Cause as to why his certificate should not be suspended pending the resolution of the criminal proceedings against him.

The Board sent Kenny the Order to Show Cause by regular and certified mail on September 26, 2012. The Order provided that Kenny must file an Answer within 30 days. Kenny submitted an Answer on October 22, 2012. In that Answer, Kenny admitted that he had been indicted on the charges stated in the Order to Show Cause although he questioned the strength of the prosecution's case. (Answer, ¶ 3). Kenny also argued that the evidence introduced to secure an indictment in Massachusetts did not provide just cause to suspend his New Jersey certificate. (Answer, ¶ 4).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on October 26, 2012, the Board sent Kenny a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Kenny 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 offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any. The certified mail was tracked as delivered and the regular mail copy was not returned. Kenny did not respond.

The threshold issue before the Board in this matter, therefore, is whether Kenny's indictment constitutes just cause unbecoming a certificate holder. At its meeting of January 25, 2013, the Board considered the allegations in the Order to Show Cause and Kenny's Answer. The Board determined that no material facts related to Kenny's offense were in dispute since he admitted that he had been indicted for the offenses charged. 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 Kenny's indictment, as 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.

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*. 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. Individuals convicted of crimes such as Rape and Abuse of Child and Furnishing Liquor to Minors fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers must serve as role models for 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.

In this case, Kenny has an arrest for a crime that directly involved danger to children. 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 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). 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). Accordingly, the State Board of Examiners finds that Kenny's potential

disqualification from service in the public schools of this State because of his indictment on charges of Rape and Abuse of Child and Furnishing Liquor to Minors provides just cause to take action against his certificate.

Accordingly, on January 25, 2013, the Board voted to suspend Kenny's certificate pending resolution of the criminal charges against him. On this 28th day of February 2013 the Board formally adopted its written decision to suspend and it is therefore ORDERED that Brendan Kenny's Teacher of Elementary School certificate be suspended effective this day. If the charges are resolved in his favor, he shall notify the Board for appropriate action regarding the suspension order. It is further ORDERED that Kenny return his certificate to the Secretary of the State Board of Examiners, Office of Licensure and Certificates, PO 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: 3/5/13

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.