

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
KEVIN M. KANE : ORDER OF REVOCATION
_____ : DOCKET NO: 1314-109

At its meeting of September 20, 2013, the State Board of Examiners (Board) reviewed information received from the Criminal History Review Unit (CHRU) and the Division of Criminal Justice (DCJ) regarding Kevin M. Kane. The DCJ notified the Board that on January 15, 2013, Kane pled guilty to seven counts of Conspiracy to Possess CDS, two counts of Official Misconduct, one count of Conspiracy to Manufacture and Distribute CDS and one count of Conspiracy to Distribute and Possess CDS in a School Zone. On April 12, 2013, Kane was sentenced to five years' imprisonment and fined. The court also ordered Kane to forfeit his teaching certificates and not reapply for them even if granted an expungement. The CHRU notified the Board that, as a result of his conviction, Kane was also disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Kane currently holds a Teacher of Elementary School Certificate of Eligibility, issued in September 1995, a Teacher of Mathematics Certificate of Eligibility, issued in October 1997 and Teacher of Elementary School and Teacher of Mathematics certificates, both issued in September 1998.

Kane 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 November 1, 2013 to issue Kane an Order to Show Cause why his certificates should not be revoked.

The Board sent Kane the Order to Show Cause by regular and certified mail on November 12, 2013. The Order provided that Kane must file an Answer within 30 days. The

certified mail receipt was signed and returned and the regular mail copy was not returned. Kane did not file a response. Thereafter, on December 27, 2013, the Board sent Kane another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. The certified mail receipt was signed and returned and the regular mail copy was not returned. Kane requested additional time to respond to the Order to Show Cause, which was granted. However, Kane did not respond by the extended deadline.

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on March 17, 2014, the Board sent Kane a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Kane 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 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 his disqualifying offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Kane was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Kane submitted a letter requesting to appear before the Board and indicated that he would be filing a response after his release from prison on April 28, 2014. Kane did not file a response and did not appear at his hearing on July 15, 2014.

The threshold issue before the Board in this matter is whether Kane's conviction and subsequent disqualification constitute conduct unbecoming a certificate holder. Since Kane failed to respond to the Order to Show Cause or the hearing notice, at its meeting of July 24, 2014, the Board considered only the allegations in the Order to Show Cause. The Board determined that no material facts related to Kane's offense were in dispute since he never denied

that he had been convicted of the offense charged and been subsequently disqualified. 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 Kane'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 a danger. Individuals convicted of crimes such as Conspiracy to Possess CDS, Official Misconduct, Conspiracy to Manufacture and Distribute CDS and Conspiracy to Distribute and Possess CDS in a School Zone fall squarely within in this category. The strong legislative policy statement is also 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. 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 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this instance, Kane's conviction for various drug offenses demonstrates behavior that falls far short 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 and the Commissioner consider Kane's offense so significant, and the Court felt compelled to keep Kane away from the classroom even if he managed to get his convictions expunged, the Board believes that the only appropriate sanction in this case is the revocation of his certificates.

Accordingly, on July 24, 2014, the Board voted to revoke Kevin Kane's Teacher of Elementary School and Teacher of Mathematics Certificates of Eligibility, and his Teacher of Elementary School and Teacher of Mathematics certificates. On this 19th day of September 2014 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Kevin Kane's certificates be effective immediately. It is further ORDERED that Kane 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

RRH/MZ/th

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.