

SBE #574-05/00-239
SB # 4-01

IN THE MATTER OF THE :
REVOCATION OF THE COUNTY : STATE BOARD OF EDUCATION
SUBSTITUTE CERTIFICATE OF : DECISION
JEFFREY WEINGARTEN. :

Decided by the State Board of Examiners, November 2, 2000

For the Respondent-Appellant, Jeffrey Weingarten, pro se

For the Petitioner-Respondent, Michael C. Walters, Deputy Attorney
General (Peter C. Harvey, Attorney General of New Jersey)

In its decision of November 2, 2000, which was mailed on February 1, 2001, the State Board of Examiners revoked a county substitute certificate that had been issued to Jeffrey Weingarten (hereinafter "respondent") by the Hudson County Superintendent of Schools in December 1998. The Board of Examiners acted after being advised by the Director of the Department of Education's Criminal History Review Unit in a memorandum dated March 11, 1999 that respondent was permanently disqualified from employment in the public schools pursuant to N.J.S.A. 18A:6-7.1 as a result of convictions for attempted criminal sale of a controlled dangerous substance in 1980 and felony criminal sale of a controlled dangerous substance in 1981. In making its determination, the State Board of Examiners found that respondent's disqualification from employment in the public schools under N.J.S.A. 18A:6-7.1 provided just cause for

it to take action against his county substitute certificate. The Board of Examiners reasoned that since the Legislature considered respondent's offense of such significance as to preclude service in the public schools, the "appropriate sanction for [respondent's] disqualification is the revocation of his certificate to teach." State Board of Examiners' Decision, slip op. at 4 (emphasis added).

Respondent filed the instant appeal to the State Board of Education.¹

In his appeal, respondent asserts that he was only convicted of one offense rather than two. He also points out that his single conviction for "Criminal Sale of a Controlled Substance 2nd Degree" in 1981 was more than 20 years ago. He argues that he had paid his debt to society by 1983 and that if he had applied for teaching credentials at that time, he would have received them. He contends that reinstatement of his county substitute certificate is in the best interests of the children, the community and the State, pointing out that he was awarded sole custody of his son and has been engaged in activities to correct some "egregious wrongs" at the Golden Door Charter School in Jersey City. He also indicates that he is disabled and needs the money he could earn from substitute teaching to help provide a decent living for his son.

Initially, we find that it was inappropriate for the State Board of Examiners to take action to revoke a county substitute certificate. N.J.S.A. 18A:6-38 provides that:

[The State Board of Examiners] shall issue appropriate certificates to teach or to administer, direct or supervise the teaching, instruction or educational guidance of, or to render or administer, direct or supervise the rendering of nursing service to pupils in public schools operated by boards of education and such other certificates as it shall be authorized to issue by law based upon certified scholastic

¹ We note that this matter was placed in abeyance in February 2001 at respondent's request while he attempted to secure additional documents. In March 2003, respondent was advised that, given the amount of time that had passed, the briefing schedule was being reestablished.

records or upon examinations, or both, and may revoke the same under rules and regulations prescribed by the state board.

It has long been established that employment as a substitute teacher is not of such character as to require that an individual possess a valid standard, provisional or emergency certificate appropriate to a specific assignment and issued by the State Board of Examiners in order to be qualified. Rumson-Fair Haven Education Association and New Jersey Education Association v. Board of Education of the Rumson Fair Haven Regional School District, decided by the State Board of Education, August 5, 1987. Thus, as we have repeatedly emphasized, a county substitute certificate is not a teaching certificate. See In the Matter of the Issuance of a County Substitute Certificate to Travis Hanks, decided by the State Board of Education, July 2, 2003; In the Matter of the Issuance of a County Substitute Certificate to Karen Gaba, decided by the State Board of Education, November 3, 1999. Rather, a county substitute certificate is a credential that authorizes an individual who has completed 60 semester hour credits at an accredited college to serve as a day-to-day substitute for a maximum of twenty consecutive days in the same assignment in one school. N.J.A.C. 6:11-4.5. The county substitute certificate is issued only for a three-year period and is valid only in the county where it is issued. Id. Because the county substitute certificate is not a teaching certificate, individuals employed under this credential are not teaching staff members within the meaning of N.J.S.A. 18A:1-1, and the credential is issued by the County Superintendent rather than by the State Board of Examiners. That being the case, it is the County Superintendent and not the State Board of Examiners that has the authority to invalidate a county substitute certificate.

Under the Department of Education's comprehensive system of appeals, any appeal from a determination by the County Superintendent must be made to the Commissioner of Education. See, e.g., In the Matter of the Denial of Issuance of a Certificate to Otto Krupp, decided by the State Board of Education, May 7, 2003. Ordinarily we would remand a matter such as this to the Commissioner. However, we find it unnecessary to do so in this case. As the ultimate administrative decision-maker in matters arising under the school laws, Matter of Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), certif. denied, 121 N.J. 615 (1990); Dore v. Board of Educ., 185 N.J. Super. 447, 452 (App. Div. 1982), we have reviewed the record and conclude that respondent is precluded from possessing a county substitute certificate.

Again, on the basis of convictions for attempted criminal sale of a controlled dangerous substance and sale of a controlled dangerous substance, respondent was disqualified from employment in the public schools of New Jersey.² Inasmuch as a county substitute certificate authorizes an individual to serve solely as a day-to-day substitute in the public schools of the county in which the certificate is issued, an individual who is disqualified from employment in the public schools pursuant to N.J.S.A. 18A:6-7.1 cannot be employed under a county substitute certificate. Hence, the fact that respondent has been disqualified under the statute precludes him from possessing a county substitute certificate.

In coming to this conclusion, we stress that respondent is precluded from employment in the public schools regardless of whether he has been rehabilitated.

² This result would not be altered even if respondent's only conviction was for the sale of a controlled dangerous substance in 1981, as he contends. Pursuant to N.J.S.A. 18A:6-7.1, any offense involving the sale of a controlled dangerous substance permanently disqualifies an individual from employment in the public schools.

Prior to 1998, an individual convicted of an offense that was disqualifying under N.J.S.A. 18A:6-7.1 could be employed in the public schools if he affirmatively demonstrated rehabilitation to the Commissioner of Education by clear and convincing evidence. However, effective June 30, 1998, the statute was amended to eliminate any provision for rehabilitation. Thus, unless a criminal record is expunged, an individual who has been convicted of an offense that is disqualifying under N.J.S.A. 18A:6-7.1 is permanently disqualified from employment in the public schools regardless of subsequent rehabilitation. Consequently, the result in this case is not altered by respondent's contentions that he is rehabilitated.

Therefore, for the reasons stated herein, we find that respondent is permanently precluded from possessing a county substitute certificate. However, we need not direct that any further action be taken with respect to the county substitute certificate issued to respondent in December 1998 because that credential was issued only for a three-year period and, accordingly, is no longer valid.

October 1, 2003

Date of mailing _____