

SBE #679-01/02-292
SB # 35-03

IN THE MATTER OF THE REVOCATION :
OF THE TEACHING CERTIFICATES OF : STATE BOARD OF EDUCATION
DOUGLAS SCOCCO BY THE STATE : DECISION
BOARD OF EXAMINERS. :

Decided by the State Board of Examiners, December 12, 2002

For the Appellant, Thomas A. Behrendt, Esq.

For the Respondent, Jason Ross, Deputy Attorney General (Peter C.
Harvey, Attorney General of New Jersey)

Appellant in this case is a teacher who was employed by the St. Joseph School for the Blind. On December 15, 2000, he was convicted of Possession of a Controlled Dangerous Substance or Analog and sentenced to confinement in county jail for two days, two years probation, 100 hours of community service, and suspension of his driver's license for six months, as well as a fine of \$2,380. On November 20, 2001, the Office of Criminal History Review notified appellant that, because of this conviction, he was permanently disqualified from employment in New Jersey's public schools pursuant to N.J.S.A. 18A:6-7.1 et seq. (hereinafter "Disqualification Statute").

On the basis of appellant's conviction for the disqualifying offense of Possession of a Controlled Dangerous Substance, the State Board of Examiners initiated proceedings to revoke appellant's certification on January 17, 2002. However, on April 16, 2002, appellant's conviction for Possession of a Controlled Dangerous

Substance was vacated by order of the Superior Court. As a result, the original charges were reinstated and the matter returned to the trial calendar. Accordingly, at its meeting on June 13, 2002, the Board of Examiners tabled the revocation proceedings pending resolution of the criminal proceedings.

On July 16, 2002, appellant notified the Board of Examiners that he had pled guilty to two counts of Failure to Make Lawful Disposition of a Controlled Dangerous Substance, a disorderly persons offense, and consequently, had been convicted of that offense on June 11, 2002. At that point, the State Board of Examiners resumed its proceedings against appellant.

Finding that no material facts were in dispute, the Board of Examiners issued its decision on July 30, 2003. The Board of Examiners concluded that appellant's "disqualification from service in the public schools of this State because of his conviction for Failure to make [sic] Lawful Distribution of a CDS provides just cause to take action against his certificates." Board of Examiners' Decision, at 3. It found that an individual who is barred from employment in New Jersey's public schools should not be permitted to retain the license that authorizes such service and concluded that because the Legislature considered appellant's offense so significant, the appropriate action for his "disqualification" was revocation of his certification.

After reviewing this matter carefully, we reverse the decision of the State Board of Examiners. The Board of Examiners' determination was based on appellant's disqualification from employment in the public schools pursuant to the Disqualification Statute. Under that statutory framework, it is the Commissioner of Education who is responsible for determining whether an applicant for employment by a public school district or for employment by a nonpublic school that requires a criminal history record

check is disqualified from employment in New Jersey's public schools. N.J.S.A. 18A:6-7.3 requires the Commissioner to forward the notice of disqualification to the State Board of Examiners in the case of any teacher he has found to be disqualified based upon the criminal history record information he has received pursuant to the Disqualification Statute if no challenge to the accuracy of the information is filed by the applicant or if the criminal history information upholds the disqualification. Although N.J.S.A. 18A:6-7.3 authorizes the Commissioner to share with the State Board of Examiners all criminal history record information regarding teaching staff members, nothing in the Disqualification Statute authorizes the State Board of Examiners to determine in the first instance whether a particular conviction permanently disqualifies an applicant from employment in the public schools pursuant to N.J.S.A. 18A:6-7.1 et seq.¹

In this case, the appellant was notified on November 20, 2001 by the Criminal History Records Office acting on behalf of the Commissioner that he was disqualified from employment in the public schools. However, the conviction that was the basis for appellant's disqualification was vacated and there has been no subsequent determination by the Commissioner under the Disqualification Statute that appellant is disqualified. Hence, the Board of Examiners could not properly revoke appellant's certification on the grounds that he is permanently disqualified from employment in New Jersey's public schools pursuant to the Disqualification Statute.

¹ Review of the recent decision in In the Matter of the Revocation of the Teaching Certificate of Patricia Rector by the State Board of Examiners, Docket #A-0454-02T3 (App. Div. 2004) does not alter this conclusion. In Rector, the Court held that the State Board of Examiners has the authority to set aside a disqualification once an expungement order is entered with regard to the disqualifying offense. The Court stressed that Ms. Rector's continued disqualification based upon a conviction which had been expunged "unquestionably was unwarranted." Id., slip op. at 9. In direct contrast to the matter now before us, Rector did not require a determination of whether a particular conviction constituted a disqualifying offense under the terms of N.J.S.A. 18A:6-7.1 et seq.

Given these circumstances, we find that the appropriate course is to refer this matter to the Commissioner for a determination as to whether appellant is permanently disqualified from employment in the public schools under the Disqualification Statute. We, however, retain jurisdiction.

We find that in order to fulfill our responsibilities for the proper implementation of the education laws, we must insure that the Disqualification Statute is effectuated as it has been enacted by the Legislature. Again, the Disqualification Statute provides that it is the Commissioner who determines in the first instance whether the appellant is disqualified from employment under that statutory framework. Moreover, N.J.S.A. 18A:6-7.3 provides applicants with the opportunity to challenge the accuracy of the criminal history information upon which a disqualification is based, and N.J.S.A. 18A:6-7.1(e) provides that no individual shall be disqualified without being provided with that opportunity. While the Board of Examiners correctly observed that appellant had not challenged the accuracy of his conviction in July 2000 pursuant to the procedural safeguards that are part of the Disqualification Statute, that conviction was vacated. Since appellant was not convicted of Failure to Make Lawful Disposition of a Controlled Dangerous Substance until June 2002, he could not possibly have challenged the accuracy of any criminal history information relating to that offense within 14 days of the disqualification notice sent to him on November 20, 2001.

In short, appellant has not been disqualified pursuant to N.J.S.A. 18A:6-7.1 et seq. Hence, the Board of Examiners could not revoke his certification on the grounds of his “disqualification from service in the public schools of this State because of his conviction for Failure to make [sic] Lawful Distribution of a CDS....” Board of Examiners’ Decision, at 3. While it would appear that Failure to Make Lawful

Disposition of a Controlled Dangerous Substance is a disqualifying offense under N.J.S.A. 18A:6-7.1 et seq., the effect of that conviction was not considered by the Commissioner pursuant to the Disqualification Statute. As a result, the criminal history information pertaining to his conviction for this offense has not been reviewed by the Office of Criminal History Records Check and he has not been provided the opportunity to avail himself of the procedural safeguards provided under the Disqualification Statute.

Moreover, we stress that even in cases where an individual has been disqualified pursuant to N.J.S.A. 18A:6-7.1 et seq., revocation by the State Board of Examiners is not automatic. Certainly, the obligation of the Board of Examiners to consider the circumstances of a matter is heightened where, as here, the individual has not been disqualified from employment under the Disqualification Statute.

Again, for the reasons set forth herein, we refer this matter to the Commissioner for a determination pursuant to N.J.S.A. 18A:6-7.1 et seq. as to whether appellant is disqualified from employment as a result of his conviction on June 11, 2002 for Failure to Make Lawful Distribution of a Controlled Dangerous Substance. We direct that the Commissioner act as expeditiously as possible and, in addition, that he effectuate any necessary update of the appellant's criminal history record check.

We retain jurisdiction.

March 3, 2004

Date of mailing _____