

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
BRIAN D. KLEIN : ORDER OF REVOCATION
_____ : DOCKET NO: 587-11/00-256

At its meeting of November 2, 2000, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that Brian D. Klein was convicted in Florida in 1994 on charges of lewd and lascivious conduct. As a result of such conviction, Klein was disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 *et seq.* Klein did not challenge the accuracy of his criminal history record before the Commissioner of Education. Klein currently holds a County Substitute certificate. Upon review of the above information, at that November meeting the State Board of Examiners voted to issue Klein an Order to Show Cause.

The Board mailed Klein the Order to Show Cause by regular and certified mail on January 19, 2001. Klein responded to the Order on February 13, 2001. In his Answer, Klein admitted that he had been disqualified and that he had not challenged the accuracy of his record. (Answer, ¶¶ 4-5.) He claimed that he did not indicate he had been convicted of a crime on his application because his attorney had told him that there would be no record of the matter. (Answer, ¶ 6.) He argued that his certificate should not be revoked because he was young and did not understand the implications of pleading no contest, he was not guilty of the crime and he was in the process of seeking an expungement. (Answer, ¶ 8.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on March 13, 2001, the Board mailed Klein a hearing notice by regular and certified mail. The notice explained that since it appeared no material facts were in dispute regarding Klein's disqualification, he 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. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his disqualifying offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

On March 29, 2001, Klein responded to the Hearing Notice. In that response he agreed that his action was conduct unbecoming a teacher. (Hearing Response, p. 1.) He argued, however, that at the time of his offense he was not a teacher and no intention of becoming one. He added that had he been a teacher at the time, he would not have engaged in any behavior that would have jeopardized his credentials. (Hearing Response, p.1.) In addition to his written response, Klein included documentation that evidenced his recent academic accomplishments.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Klein's disqualification, which was predicated on the same offense as was set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

At its meeting of May 10, 2001, the State Board of Examiners reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After review of the response, the Board of Examiners determined that no material facts related to respondent's offense were in dispute since not only had he not denied that he had been disqualified based on his offense, but he also agreed that his conduct was unbecoming a teacher.

Unbecoming conduct is a broadly defined term that includes "any conduct, which has a tendency to destroy public respect for [public] employees and competence in the operation

of [public] services.” Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998). In the educational arena, unbecoming conduct relates to a teacher’s fitness to discharge the duties and functions of the position. Laba v. Newark Board of Education, 23 N.J. 364, 384 (1957).

In enacting the Criminal History Review statute, N.J.S.A. 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 to them. According to the statute, any individual convicted of a crime in another jurisdiction for a substantially equivalent crime if committed in New Jersey falls squarely within this category. N.J.S.A. 18A:6-7.1(1)(d). In this case, Klein’s disqualification represents a legislative conclusion that the behavior in which he engaged in Florida renders him unfit for contact with New Jersey’s public school children. The Board of Examiners agrees. Klein has a conviction for a crime that involved lewd and lascivious behavior. Moreover, although his offense occurred prior to his certification as a teacher, the Legislature has determined and the Board of Examiners agrees that the passage of time is of no consequence here. Accordingly, the State Board of Examiners finds that Klein’s disqualification from service in the public schools of this State because of his conviction is conduct unbecoming and provides just cause to take action against his certificates.

The strong policy statement on the part of the Legislature set forth in N.J.S.A. 18A:6-7.1b also offers guidance to the State Board of Examiners as to the appropriate sanction in this matter. An individual whose offense warrants his preclusion from service in the 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. Because the Legislature considers Respondent’s offense so significant,

the State Board of Examiners in this matter believes that the appropriate sanction for Klein's disqualification is the revocation of his certificate to teach.

Accordingly, it is therefore ORDERED that Brian D. Klein's County Substitute certificate be revoked on this 10th day of May 2001. It is further ORDERED that Klein return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Acting Secretary
State Board of Examiners

Date of Mailing: March 22, 2002

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

JD:MZ:briandklein