

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS  
DAVID SALOMON : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0304-273

At its meeting of June 10, 2004, the State Board of Examiners reviewed information received from the Office of Criminal History Review indicating that respondent David Salomon was convicted in June 2001 for Sherman Act/Anti-Trust Conspiracy Bid Rigging. Salomon was sentenced to 18 months' incarceration, 12 months' supervised release, fined \$60,000 and ordered to pay \$540,000 restitution individually and \$12.3 million restitution with co-conspirators. As a result of his conviction, Salomon was disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Salomon currently holds a Teacher of the Handicapped certificate, issued in July 1973.

Salomon did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the State Board of Examiners voted to issue Salomon an Order to Show Cause at its meeting of June 10, 2004.

The Board sent Salomon the Order to Show Cause by regular and certified mail on July 21, 2004. The Order provided that Salomon must file an Answer within 30 days. Salomon filed his Answer on August 2, 2004.

In his Answer, Salomon admitted that he had been convicted of violating the Sherman Act. He stated that he had completed his sentence, was no longer on supervised release and had paid his share of the restitution. (Answer, ¶ 4.) Salomon further asserted that he did not believe his conviction warranted the revocation of his teaching certificate. (Answer, ¶ 6.) Rather, he argued that the crime of which he was convicted was of a non-violent nature, did not involve drugs or sexual misconduct. (Answer, ¶ 6.) Salomon also claimed that, as a teacher, he had

worked with severely emotionally disturbed students and had made a difference. (Answer, ¶ 6.) He stated that the principal of the school where he worked had rehired him after his release from prison. (Answer, ¶ 6.) Finally, Salomon argued that he had been convicted of a “white collar” crime and that prior to this offense had never been arrested, charged or convicted of any felony or misdemeanor. (Answer, ¶ 7.)

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, the Board sent Salomon a hearing notice by regular and certified mail. The notice explained that since it appeared no material facts were in dispute, Salomon 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. Salomon filed a response to the hearing notice on November 18, 2004. In that response, he claimed that the dollar amount of the crime determined the class of his felony conviction and that the amount of his violation was calculated by adding up all of the co-conspirators’ bids. He argued that his crime was economic in nature and unlike the other crimes enumerated in the disqualification statute. (Hearing Response, p. 1.) Salomon also urged the Board of Examiners to consider that had he not been indicted with others, the class of his felony might have been reduced to a misdemeanor level and not have lead to the current revocation proceeding. (Hearing Response, p. 1.)

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Salomon’s disqualifying offense constitutes conduct unbecoming a certificate holder. At its meeting of January 20, 2005, the State Board of Examiners reviewed the charges and

papers Salomon filed in response to the Order to Show Cause. After review of the response, the Board of Examiners determined that no material facts related to Salomon's offense were in dispute since he never denied that he had committed the offense nor did he deny that he had been disqualified because of it. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*.

The State Board of Examiners must now determine whether Salomon'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. 6A:9-17.5*. The Board finds that it does.

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 to them. Although Salomon would argue otherwise, individuals convicted of certain economic crimes fall squarely within this category. *N.J.S.A. 18A:6-7.1c(2)*. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers serve as role models for their students. 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 Salomon's disqualification from service in the public schools of this State because of his conviction for participating in a bid rigging conspiracy in violation of the Sherman Act provides just cause to take action against his certificate.

That strong policy statement on the part of the Legislature set forth in *N.J.S.A. 18A:6-7.1* also offers guidance to the State Board of Examiners 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 considers Salomon's offense so significant, the State Board of Examiners believes that the only appropriate sanction in this case is the revocation of his teaching certificate.

Moreover, notwithstanding Salomon's contentions of rehabilitation, this is not the proper context for such considerations. The purpose of this proceeding is "to permit the individual certificate holder to demonstrate circumstances or facts to counter the charges set forth in the Order to Show Cause, not to afford an opportunity to show rehabilitation." *See In the Matter of the Revocation of the Teaching Certificate of Gloria Jackson by the State Board of Examiners*, 96 N.J.A.R. 2D (EDE) 1, 16 *aff'd*, App. Div. Dkt. No. A-1246-96T5 (September 9, 1997) citing *In the Matter of the Revocation of the Teaching Certificate of James Noll*, State Bd. of Examiners decision (February 7, 1990).

Accordingly, it is therefore ORDERED that David Salomon's Teacher of the Handicapped certificate be revoked on this 20th day of January 2005. It is further ORDERED that Salomon return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

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Michael K. Klavon, Acting Secretary  
State Board of Examiners

Date of Mailing: February , 2005

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