

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
PHILLIP BIRNBAUM : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 1314-185

At its meeting of April 4, 2014, the State Board of Examiners (Board) reviewed information received from the Division of Pensions (Pensions) regarding Phillip Birnbaum. Birnbaum was convicted of Aggravated Sexual Assault, Aggravated Criminal Sexual Contact and Endangering the Welfare of a Child in 1997. Birnbaum holds a Teacher of Music certificate, issued in May 1975 and a Supervisor certificate, issued in May 1990. Upon review of the above information, at its May 22, 2014 meeting, the Board voted to issue Birnbaum an Order to Show Cause.

The Board sent Birnbaum the Order to Show Cause by regular and certified mail on May 28, 2014. The Order provided that Birnbaum had 30 days to respond. The certified mail copy was returned as "Unclaimed" and the regular mail copy was not returned. Birnbaum did not respond. Thereafter, on July 30, 2014, the Board sent Birnbaum another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. The certified mail copy was returned as "Unclaimed" and the regular copy was not returned. Birnbaum did not respond.

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.7(e)*, on August 20, 2014, the Board sent Birnbaum a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Birnbaum 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 determined 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 Birnbaum's offenses warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Birnbaum was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. The certified mail copy was returned as "Unclaimed" and the regular mail copy was not returned. Once again, Birnbaum did not respond.

The threshold issue before the Board in this matter is whether Birnbaum's conduct and crime constitute conduct unbecoming a certificate holder. Since Birnbaum failed to respond to the Order to Show Cause or the hearing notice, at its meeting of October 23, 2014, the Board considered only the allegations in the Order to Show Cause. The Board determined that no material facts related to Birnbaum's offense were in dispute since he never denied that he had been convicted. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.7(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 Birnbaum's conviction, as set forth in the Order to Show Cause, provides just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.5*. The Board finds that it does.

The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C. 6A:9B-4.5*. "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 matter, Birnbaum has a conviction for an offense against children. That conviction leaves no doubt that he is unfit to be a teacher. His conduct demonstrates behavior that falls so far short of a role model that the Board believes that the only appropriate sanction in this case is the revocation of Birnbaum's certificates.

Accordingly, on October 23, 2014, the Board voted to revoke Birnbaum's Teacher of Music and Supervisor certificates. On this 12th day of December 2014 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Phillip Birnbaum's certificates be effective immediately. It is further ORDERED that Birnbaum 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.

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Robert R. Higgins, Secretary  
State Board of Examiners

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.

RRH:MZ:th