

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
NICOLE L. DUFAULT : ORDER OF SUSPENSION
_____ : DOCKET NO: 1415-177

At its meeting of January 21, 2016, the State Board of Examiners (Board) reviewed information received from the Essex County Prosecutor's Office and the Criminal History Review Unit regarding Nicole L. Dufault. On November 3, 2014, Dufault was charged with 23 counts of 1st degree Aggravated Sexual assault and 17 counts of 2nd degree Endangering the Welfare of a Child. The indictment alleged that Dufault had engaged in sexual penetration with multiple victims between 13 and 16 years old and over whom Dufault had supervisory or disciplinary power. If convicted, Dufault would be disqualified from public employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Dufault currently holds a Teacher of English Certificate of Eligibility With Advanced Standing, issued in June 2001, a Teacher of English certificate, issued in June 2002 and a Teacher of Elementary School in Grades K-5 certificate, issued in April 2005. Upon review of the above information, at its meeting of March 3, 2016, the Board voted to issue Dufault an Order to Show Cause as to why her certificates should not be suspended pending the resolution of the criminal proceedings against her.

The Board sent Dufault the Order to Show Cause by regular and certified mail on March 8, 2016. The Order provided that Dufault must file an Answer within 30 days. Dufault filed an Answer on March 23, 2016. In that Answer, Dufault admitted the allegations in the Order to Show Cause. (Answer, ¶¶ 1-3). In addition to her Answer, Dufault filed a letter stating that the pendency of the criminal charges should not result in the suspension of her certificates because: it would be unfair and premature; she had left her teaching position as a result of the charges and could not return to teaching until the charges were resolved; and it would be an unfair form of

punishment for her based on criminal charges that had not yet proved to be true. (Answer Letter, pp. 1-2).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on March 29, 2016, the Board sent Dufault a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Dufault 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 found just cause to take action against her certificates. It also explained that upon review of the charges against her and the legal arguments tendered in her defense, the Board would determine if her offense warranted action against her certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Dufault was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Dufault responded on April 4, 2016. In that letter, Dufault stated that she had nothing to add to her previous submissions. (Hearing Response, p. 1). She did continue to urge the Board to forgo suspending her certificates during the pendency of the criminal charges filed against her. (Hearing Response, p. 1). Dufault did not ask to appear before the Board.

The threshold issue before the Board in this matter, therefore, is whether Dufault's conduct underlying her indictment constitutes conduct unbecoming a certificate holder. At its meeting of May 20, 2016, the Board considered the allegations in the Order to Show Cause, Dufault's Answer and her Hearing Response. The Board determined that no material facts related to Dufault's offense were in dispute since she admitted that she had been indicted for the offenses charged. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.7(h)*.

The Board must now determine whether Dufault's conduct and charges, as set forth in the Order to Show Cause, represent just cause to act against her certificates pursuant to *N.J.A.C. 6A:9B-4.5*. The Board finds that they do.

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*. 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 dangerous. Individuals convicted of crimes such as Aggravated Sexual Assault and Endangering the Welfare of a Child fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-held belief that teachers must serve as role models for students. "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 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this case, Dufault has been indicted for multiple crimes involving children. The Board therefore finds that Dufault's potential disqualification from service in the public schools of this State because of her indictment for Aggravated Sexual Assault and Endangering the Welfare of a Child provides just cause to take action against her certificates.

Accordingly, on May 20, 2016, the Board voted to suspend Dufault's certificates pending resolution of the criminal proceedings against her. On this 23rd day of June 2016, the Board

formally adopted its written decision to suspend and it is therefore ORDERED that Nicole L. Dufault's Teacher of English Certificate of Eligibility With Advanced Standing and her Teacher of English and Teacher of Elementary School in Grades K-5 certificates be suspended effective this day. If the charges are resolved in her favor, she shall notify the Board for appropriate action regarding the suspension order. It is further ORDERED that Dufault return her certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, PO Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

RRH/MZ/th

Date of Mailing:
via regular and certified mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.