

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
MICHAEL J. MARTINO	:	ORDER OF SUSPENSION
_____	:	DOCKET NO: 1516-133

At its meeting of September 16, 2016, the State Board of Examiners (Board) reviewed information received from the Warren County Prosecutor's Office and the Criminal History Review Unit regarding Michael J. Martino. On April 6, 2016, Martino was indicted on charges of 2<sup>nd</sup> degree Sexual Assault, 2<sup>nd</sup> degree Endangering the Welfare of a Child and 2<sup>nd</sup> degree Official Misconduct. The indictment alleged that Martino had engaged in sexual penetration and sexual contact with the victim, a child between the ages of 16 and 18 years old. If convicted, Martino would be disqualified from public employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Martino currently holds a Teacher of Mathematics Certificate of Eligibility With Advanced Standing, issued in February 1997, a Teacher of Mathematics certificate, issued in July 1998 and a Supervisor certificate, issued in June 2008. Upon review of the above information, at its meeting of November 1, 2016, the Board voted to issue Martino an Order to Show Cause as to why his certificates should not be suspended pending the resolution of the criminal proceedings against him.

The Board sent Martino the Order to Show Cause by regular and certified mail on November 3, 2016. The Order provided that Martino must file an Answer within 30 days. Martino filed an Answer on December 5, 2016. In that Answer, Martino admitted that the Order to Show Cause stated the charges in the Indictment but denied the legal conclusion that he would be disqualified from public employment if convicted. (Answer, ¶ 3). He also denied that there was just cause to consider the suspension of his certificates pending resolution of the criminal proceedings against him. (Answer, ¶ 4). Martino also stated that the Board should vacate the

Order to Show Cause or transfer the matter to the Office of Administrative Law for hearing. (Answer, ¶ 5). In addition to his Answer, Martino submitted a supplemental letter. In that letter, Martino stated that the pendency of the criminal charges should not result in the suspension of his certificates because: it would be unfair and premature as the Board could not know the outcome of the criminal litigation; he had left his teaching position as a result of the charges and could not likely return to teaching until the charges were resolved; and it would be an unfair form of punishment for him based on criminal charges that had not yet proved to be true. (Supplemental Letter, pp. 1-2). He also urged the Board to forgo suspending his certificates during the pendency of the criminal charges filed against him or, at the very least, afford him a hearing on the merits before imposing a suspension. (Supplemental Letter, p. 2).

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, on January 6, 2017, the Board sent Martino a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Martino 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 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 his offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Martino was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Martino responded on February 2, 2017, stating that he wished to rely on his Answer and supplemental letter. Martino waived his right to appear before the Board.

The threshold issue before the Board in this matter, therefore, is whether Martino's indictment on charges of 2<sup>nd</sup> degree Sexual Assault, 2<sup>nd</sup> degree Endangering the Welfare of a Child and 2<sup>nd</sup> degree Official Misconduct justifies suspension of his certificates pending resolution of the criminal charges. At its meeting of April 6, 2017, the Board considered the allegations in the Order to Show Cause, Martino's Answer and his Supplemental Letter. The Board determined that no material facts related to Martino's offense were in dispute since he admitted that he 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-4.6(h)*.

The Board must now determine whether Martino's conduct and charges, as set forth in the Order to Show Cause, represent just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.4*. 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-4.4*. 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 Sexual Assault, Endangering the Welfare of a Child and Official Misconduct 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, Martino has been indicted for an offense involving sexual conduct with a minor. The Board therefore finds that Martino's potential disqualification from service in the public schools of this State because of his indictment for various sexual offenses provides just cause to take action against his certificates.

Accordingly, on April 6, 2017, the Board voted to suspend Martino's certificates pending resolution of the criminal proceedings against him. On this 12th day of May 2017, the Board formally adopted its written decision to suspend and it is therefore ORDERED that Michael J. Martino's Teacher of Mathematics Certificate of Eligibility With Advanced Standing and his Teacher of Mathematics and Supervisor certificates be suspended, effective immediately. If the charges are resolved in his favor, he shall notify the Board for appropriate action regarding the suspension order. It is further ORDERED that Martino return his 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.

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Robert R. Higgins, Secretary  
State Board of Examiners

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Date of Mailing:  
via certified and regular mail

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