

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
JUAN COTTO : ORDER OF REVOCATION
_____ : DOCKET NO: 606-02/01-285

At its meeting of February 22, 2001, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Juan Cotto from his tenured position with the State-Operated School District of the City of Newark for charges of unbecoming conduct. Cotto currently holds Teacher of Spanish, Teacher of English, Teacher of Bilingual/Bicultural Education, Principal/Supervisor and Teacher of Elementary School certificates.

This case originated on June 15, 1997 when the State-Operated School District of the City of Newark Board of Education certified tenure charges against respondent, Juan Cotto. Cotto was employed as a Teacher of Elementary School during the 1996-1997 school year. The district charged him with unbecoming conduct, corporal punishment and insubordination for using excessive force to discipline students, uttering profanity and racial epithets in his classroom and for making derogatory and demeaning statements to students.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Ken R. Springer heard testimony for 12 days ending on September 23, 1998. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on May 10, 2000.

In that decision ALJ Springer found that Cotto had used unnecessary force to punish a student for a wisecrack. (Initial Decision, slip op. at 5). The Judge also found that on another occasion Cotto used a disproportionate amount of force to maintain discipline in the classroom. As a result, Cotto caused a child to fall over and hurt himself. (Initial Decision, slip op. at 7). ALJ Springer further determined that Cotto had injured other students through the use of unnecessary physical force. (Initial decision, slip op. at 8, 9-10.) Finally, Springer recounted numerous incidents of demeaning or derogatory language Cotto had used in the classroom, including calling

some students crack babies or telling others that they would never amount to anything because their families were on welfare. (Initial Decision, slip op. at 10-12.)

After considering all the testimony, ALJ Springer found that Cotto's conduct was improper. The Judge found that Cotto had received warnings against the use of corporal punishment in 1991 when he had used excessive force to break up a fight among several students. (Initial Decision, slip op. at 12-14). The ALJ therefore concluded that the Board had proven the charges of unbecoming conduct brought against Cotto. (Initial Decision, slip op. at 14).

In considering the appropriate penalty, the Judge examined Cotto's record. Judge Springer determined that the district's prior warnings to Cotto on the use of corporal punishment coupled with the current series of incidents involving his disproportionate use of physical force militated his removal from the classroom. (Initial Decision, slip op. at 14). Thus, based on his review of the entire record, the ALJ concluded that Cotto's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 14). Consequently, the ALJ ordered Cotto dismissed from his tenured employment.

In a decision dated June 26, 2000, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Cotto. The Commissioner agreed with the ALJ that the local board had proven its case against Cotto with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 39). The Commissioner concurred with the ALJ's conclusion that "a teacher with respondent's experience should have known better than to push, shove and verbally abuse his students...." (Commissioner's Decision, slip op. at 40). Accordingly, the Commissioner affirmed Cotto's removal from his tenured employment with the State-Operated School District of the City of Newark and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Cotto's certificates. Cotto also appealed from the Commissioner's decision to the State Board of Education which affirmed the decision on November 1, 2000. (State Bd. Of Ed. Decision, slip op. at 1.)

Thereafter, on April 27, 2001, the State Board of Examiners issued an Order to Show Cause to Cotto as to why his certificates should not be or suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board of Examiners mailed the Order to Show Cause to Cotto by regular and certified mail on April 27, 2001. The Order provided that an Answer must be filed within 20 days. Cotto filed an Answer on May 17, 2001. In his Answer Cotto admitted that the district had brought tenure charges against his. He also stated that the district never presented any proof such as a police report or letters from parents demonstrating the use of excessive force on his part. Additionally, Cotto alleged that the charges against him were politically motivated. (Answer, ¶¶ 6a-6b). In the remainder of his Answer, Cotto added that he had been unable to find employment since the tenure decision and felt that he had been punished enough. He argued that to revoke or suspend his certificates would further harm him by preventing him from finding employment in another state. (Answer, ¶ 6e.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on June 27, 2001, the Board of Examiners sent Cotto a hearing notice by regular and certified mail. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, Cotto 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 offense warranted action against his certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Coto responded to the Hearing Notice on July 17, 2001. In that response, he submitted the appeal brief his former attorney had submitted to the State Board of Education when he was appealing his tenure case. (Hearing Response, p. 1.). That brief essentially argued why the ALJ

and Commissioner had erred in finding as they did that Cotto should be dismissed from his tenured position.

The threshold issue before the State Board of Examiners in this matter is to determine whether Cotto's conduct, as set forth in the ALJ's findings of fact, constitutes conduct unbecoming a certificate holder. At its meeting of October 1, 2001, the State Board of Examiners reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Cotto's offense were in dispute since he admitted that he had lost his tenure and argued that the tenure charges against him were politically motivated and unsubstantiated, matters that had already been resolved at his tenure hearing. Thus, Cotto has not denied the charges in the Order to Show Cause. Accordingly, his actions regarding his inappropriate behavior toward students constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Cotto's offense as set forth in the Order to Show Cause, represents just cause to act against his certificates pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners 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. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), *aff'd*. 131 N.J.L. 326 (E & A 1944). "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. There can be no dispute that Cotto's repeated use of unnecessary physical force when dealing with his students negates any claim that he can have to self-restraint. His inability to interact with unruly students without the use of physical

intervention speaks volumes about his lack of control. This volatility does not belong in a classroom. Thus, the only proper response to Cotto's breach is revocation.

Accordingly, it is therefore ORDERED that Juan Cotto's Teacher of Spanish, Teacher of English, Teacher of Bilingual/Bicultural Education, Principal/Supervisor and Teacher of Elementary School certificates be revoked on this 1st day of October 2001. It is further ORDERED that Juan Cotto return his certificates to the Secretary of the State Board of Examiners, Office of Licensing, PO Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Joan E. Brady, Secretary
State Board of Examiners

Date of Mailing: March 6, 2003

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