

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
ROGELIO HERNANDEZ : ORDER OF REVOCATION
_____ : DOCKET NO: 646-10/01-294

At its meeting of October 1, 2001, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Rogelio Hernandez from his tenured position with the State Operated School District of the City of Newark (hereafter Newark) for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Rogelio Hernandez, Docket No. 474-10/98 (March 23, 1999). Hernandez currently holds a Teacher of Elementary School certificate.

This case originated on October 15, 1998 when Newark certified tenure charges against respondent, Rogelio Hernandez. The district charged him with unbecoming conduct for physically abusing three students, J.G., A.F., and R.R. The Division of Youth and Family Services (DYFS) substantiated the third allegation of physical abuse. Moreover, the first allegation of abuse, against J.G., was dismissed for a lack of competent evidence.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Edith Klinger heard testimony on several days in January and February 1999. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on March 23, 1999.

In that decision ALJ Klinger found that Hernandez had physically abused two students, A.F. and R.R. In R.R.'s case, Hernandez ejected him from the classroom in such a way that R.R. was shoved into a hallway wall and injured his forehead. Three witnesses corroborated this version of the event. (Initial Decision, slip op. at 6-10).

After considering all the testimony, ALJ Klinger found that Hernandez' conduct was improper. The Judge also found that, despite Hernandez' assertions to the contrary, the district had previously ordered him to focus on developing alternatives to his handling of conflict resolution and discipline. (Initial Decision, slip op. at 12-13). Judge Klinger therefore found Hernandez' claim that he never knew the district had any issue with the way he treated students to be incredible. (Initial Decision, slip op. at 13-14).

Judge Klinger determined that Hernandez had engaged in corporal punishment against the two students and that his behavior constituted conduct unbecoming a teacher. The ALJ therefore concluded that the Newark Board had demonstrated that the charge of unbecoming conduct of a teaching staff member brought against Hernandez was true. (Initial Decision, slip op. at 14-17).

In considering the appropriate penalty, the Judge examined Hernandez' record. She found that his behavior with students had escalated over the years, even after repeated warnings and several DYFS investigations. Moreover, Judge Klinger found aggravating factors in both of Hernandez' incidents with these students that made it undesirable to have him remain in the classroom. Moreover, she found no mitigating factors in this case. (Initial Decision, slip op. at 17-18). Thus, based on her review of the entire record, the ALJ concluded that Hernandez' breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 18). Consequently, the ALJ ordered Hernandez dismissed from his tenured employment.

In a decision dated May 10, 1999, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Hernandez.¹ The Commissioner agreed with the ALJ that the local board had proven its case against Hernandez with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 24-25). The Commissioner found that Hernandez had engaged in corporal punishment. The Commissioner was also troubled by Hernandez' unwillingness or inability to recognize the inappropriateness of his actions. (Commissioner's Decision, slip op. at 26). Accordingly, the Commissioner affirmed Hernandez' 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 Hernandez' certificate. The Commissioner's determination was upheld on appeal to the State Board of Education on October 6, 1999 and then on appeal to the Appellate Division.

Thereafter, on October 1, 2001, the State Board of Examiners issued an Order to Show Cause to Hernandez as to why his certificate should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent the Order to Show Cause to Hernandez by regular and certified mail on April 5, 2002. The Order provided that an Answer must be filed within 20 days. Hernandez filed an Answer on April 30, 2002. In his Answer Hernandez admitted that the district had brought tenure charges against him. He also admitted that he had lost his tenured position and that the Commissioner, State Board and Appellate Division had all

¹ The Commissioner modified a portion of the Initial Decision that involved a specific finding of fact regarding whether Hernandez had requested an intercom key for his classroom. That issue is not relevant

affirmed that decision. (Answer, ¶¶ 1-5). In the remainder of his Answer, Hernandez stated that he had already been punished enough through the loss of his tenured position and that he would have financial difficulty supporting his family if he lost his certificate. Hernandez added that he had successfully rehabilitated his teaching career. (Answer, ¶ 6.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on June 3, 2002, the Board sent Hernandez 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, respondent 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 certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Hernandez responded to the Hearing Notice on June 20, 2002. In that response, Hernandez claimed that he had been praised in evaluations for handling discipline in his own way and that the administration used his classroom as a “time out” room where other teachers would send their discipline problems. (Hearing Response, p. 2.) He also stated that he volunteered for extra nonpaying duties. He claimed that other than the year the district leveled charges against him he had always received satisfactory evaluations. He argued that his actions against students stemmed from the stress of being an “ad hoc” administrator of discipline prone students. (Hearing Response, p.3.) Finally, Hernandez

here and is not addressed in this decision.

claimed that in a different environment he had succeeded in educating students. (Hearing Response, p.3.)

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Hernandez' conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of September 26, 2002, the State Board of Examiners reviewed the charges and papers Hernandez filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Hernandez' offense were in dispute since he had admitted the allegations in the Order to Show Cause. Thus, the Board of Examiners determined that summary decision was appropriate in this matter. N.J.A.C. 6:11-3.6(a)1

The State Board of Examiners must now determine whether Hernandez' offense as set forth in the Order to Show Cause, represents just cause to act against his certificate 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 based on 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 Hernandez' behavior regarding A.F. and R.R. negates any claim that he can have to self-restraint. His inability

to control a classroom or discipline students without resorting to physical aggression speaks volumes about his lack of control. This volatility does not belong in a classroom. Thus, the only proper response to Hernandez' breach is revocation.

Accordingly, it is therefore ORDERED that Rogelio Hernandez' Teacher of Elementary School certificate be revoked on this 26th day of September 2002. It is further ORDERED that Hernandez return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Joan E. Brady, Secretary
State Board of Examiners

Date of Mailing: January 28, 2004

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