

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
MICHAEL NIEVES : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0304-140

At its meeting of October 30, 2003, the State Board of Examiners voted to issue Michael Nieves an Order to Show Cause. The Order was predicated on charges of unbecoming conduct. Nieves currently holds a Teacher of English Certificate of Eligibility With Advanced Standing, issued in July 1996; a Teacher of English certificate, issued in August 1998; and a Teacher of Elementary School certificate, issued in July 2002.

This case originated when the Union City Board of Education removed Nieves, a non-tenured teacher, for cause. The district alleged that Nieves had acted inappropriately with a female student in his class by, among other things, passing suggestive notes to her. An arbitration occurred and the arbitrator determined that Union City appropriately terminated Nieves' employment. The district provided information to the State Board of Examiners regarding Nieves. On October 30, 2003, the Board of Examiners issued Nieves an Order to Show Cause based upon the information provided by Union City.

The Board sent Nieves the Order to Show Cause by regular and certified mail on March 5, 2004. The Order provided that Nieves' Answer was due within 20 days. Nieves filed an Answer on March 24, 2004. In his Answer, Nieves admitted that the Union City district terminated his employment contract. (Answer, ¶ 3). He also admitted that an arbitration hearing took place regarding his termination and that the opinion and award "speaks for itself." (Answer, ¶ 4). Nieves further denied any wrongdoing or

misconduct that would warrant the suspension or revocation of his certificates. (Answer, ¶ 7).

The Board of Examiners transmitted the case to the OAL on April 27, 2004. Administrative Law Judge (ALJ) Margaret Monaco heard testimony on several days in January 2005 and after both parties submitted post-hearing briefs, the record closed. ALJ Monaco issued her Initial Decision on November 10, 2005. *In the Matter of the Certificates of Michael Nieves*, Docket No. EDE 3867-04 (November 10, 2005).

In that decision, ALJ Monaco found that Nieves had engaged in passing notes with L., a 14 year-old female student in one of his language arts classes. (Initial Decision, slip op. at 5). After another student's parent expressed concern to the principal about the note passing, the principal obtained one of the notes Nieves had passed to student L. (Initial Decision, slip op. at 5-6). Thereafter, the principal suspended Nieves. (Initial Decision, slip op. at 6). The district board subsequently terminated Nieves' employment. (Initial Decision, slip op. at 6).

The ALJ held that the students who testified gave consistent, sincere and credible testimony regarding the mode and frequency of the notes. (Initial Decision, slip op. at 9-10). Furthermore ALJ Monaco determined that even though the "student witnesses were unable to recall with precision certain events or when they occurred" that was not unreasonable since the events transpired two years earlier. (Initial Decision, slip op. at 10). The ALJ further found that both student L and Nieves testified that the notes started after L told Nieves that she had a crush on a player on the basketball team he coached. (Initial Decision, slip op. at 11). The ALJ noted that the testimony diverged when L stated that the notes developed into flirting and later took on a suggestive tone whereas

Nieves insisted that the notes were always of a “friendly” and “jokingly” nature and did not contain any sexual content. (Initial Decision, slip op. at 11). According to the ALJ, she found L’s testimony “regarding the change in the tone of the notes to be credible and persuasive.” (Initial Decision, slip op. at 11).

The ALJ also found that the Nieves never saw L outside of school or had any telephone contact with her. (Initial Decision, slip op. at 12). ALJ Monaco also held that there was “insufficient credible and legally competent evidence to support a finding that Nieves engaged in any physical contact with Student L. during class or otherwise, that Nieves gave Student L. his telephone number or that Nieves made the comments described by Student M. and Student L. at sporting events and about Student L.’s shirt.” (Initial Decision, slip op. at 13).

After reviewing all of the evidence, ALJ Monaco concluded that Nieves’ engaged in conduct unbecoming a teacher “predicated upon his exchange of inappropriate notes during class with an eighth grade student.” (Initial Decision, slip op. at 17). The ALJ determined that Nieves’ behavior was inappropriate, irresponsible and unprofessional and was a “significant departure from the standard of proper conduct that the public has the right to expect from those who teach their children.” (Initial Decision, slip op. at 17). In fact, the ALJ noted that even though Nieves’ attempted to minimize the seriousness of the notes, the one intercepted note represented behavior that warranted revocation of his certificates, even if no other notes existed. (Initial Decision, slip op. at 17). Consequently, ALJ Monaco held that Nieves’ conduct constituted just cause for the revocation of his teaching certificates. (Initial Decision, slip op. at 17.)

On November 23, 2005, Nieves filed exceptions to the ALJ's decision. In his exceptions, Nieves pointed out inconsistencies in the students' testimony which, he suggested, indicated that the students had exaggerated and fabricated their testimony. (Exceptions, pp. 1-6). In addition, Nieves argued that the Board of Examiners did not meet its burden in proving that his conduct warranted the revocation of his certificates. (Exceptions, p.6). Rather, he stated that prior to the incident in question he had successfully taught and coached "in a variety of settings and subjects." (Exceptions, p.6). Moreover, Nieves reiterated that while he never denied exchanging notes, he consistently denied that they contained inappropriate content. (Exceptions, p.7). He argued that the case came down to a credibility determination and suggested that L's allegations arose after he had refused to give her his phone number, changed her seat in class to reduce the amount of socializing, teased her about having a crush on a basketball player and reprimanded her for wearing an inappropriate shirt to school. (Exceptions, p.8). Nieves also argued that he had already been punished for the incident by the loss of his teaching position. (Exceptions, p.8). He urged the Board to dismiss the charges, or, in the alternative, to impose only a suspension. (Exceptions, p.9).

In reply exceptions, the Deputy Attorney General (DAG) representing the Board of Examiners argued that the ALJ's credibility determinations were supported by the evidence and should be adopted. (Reply Exceptions, p.1). Moreover, the DAG noted that inconsistencies in the students' testimony related to immaterial matters. (Reply Exceptions, p.2). The DAG argued that the issue before the ALJ "was whether Nieves engaged in conduct unbecoming a teacher. The testimony on this issue was consistent." (Reply Exceptions, p. 3). The DAG stated that Nieves had admitted to writing the note

that was in evidence and that the ALJ had determined that this note alone supported the revocation of his teaching certificates. (Reply Exceptions, p.4). Accordingly, the DAG urged the Board to adopt the Initial Decision in its entirety. (Reply Exceptions, p.4).

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of January 19, 2006, the State Board of Examiners reviewed the Initial Decision, exceptions and reply exceptions. After full and fair consideration of all the submissions, the Board voted to adopt the Initial Decision. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. Furthermore, the note presented in evidence that Nieves authored and was recounted in the DAG's reply exceptions, clearly is inappropriate and leaves no doubt that he has engaged in conduct unbecoming a teacher, one of the grounds for revocation or suspension of a teaching certificate. *N.J.A.C. 6A:9-17.5*. Accordingly, the remaining decision for this Board is one of penalty.

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. 6A:9-17.5*. Furthermore, 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). "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. The Board of Examiners agrees with the ALJ

that if this note is indicative of others that Nieves sent to a student, he should not be teaching in New Jersey's classrooms.

Accordingly, pursuant to the Board of Examiners' vote, it is therefore ORDERED that the Initial Decision in this matter is adopted. It is further ORDERED that Michael Nieves' Teacher of English Certificate of Eligibility With Advanced Standing, and his Teacher of English and Teacher of Elementary School certificates be revoked effective this 2nd day of March 2006. It is further ORDERED that Nieves return his certificates to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

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Robert R. Higgins, Acting Secretary  
State Board of Examiners

Date of Mailing: MARCH 8, 2006

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