

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
ANTHONY MANGAN : ORDER OF SUSPENSION
_____ : DOCKET NO: 0506-142

At its meeting of April 11, 2002, the State Board of Examiners voted to issue Anthony Mangan an Order to Show Cause. The Order was predicated on charges of unbecoming conduct. Mangan currently holds Teacher of English and Teacher of Speech Arts and Dramatics certificates, both issued in June 1974.

This case originated when the Holmdel Board of Education brought tenure charges against Mangan for unbecoming conduct. *In the Matter of the Tenure Hearing of Anthony Mangan*, Dkt. No. 429-11/00 and 142-5/01 (consolidated). The district alleged that Mangan had inappropriate physical contact with a student, made inappropriate and vulgar comments, made innuendoes of a sexual nature and was previously warned about such conduct. In a decision dated January 31, 2002, the Commissioner of Education approved a settlement of the tenure matter. Mangan agreed to resign his tenured position as of June 30, 2003. In exchange, the district would place him on paid medical leave of absence until the effective date of his resignation. The Commissioner provided the information to the State Board of Examiners regarding Mangan. On April 11, 2002, the Board of Examiners issued Mangan an Order to Show Cause based upon the conduct alleged in the tenure charges.

The Board sent Mangan the Order to Show Cause by regular and certified mail on May 30, 2002. The Order provided that Mangan's Answer was due within 20 days. Mangan filed an Answer on June 13, 2002. In his Answer, Mangan admits that the district brought tenure charges against him and that the matter was settled. (Answer, ¶¶

3, 4). He added that nothing in the settlement agreement sustained the tenure charges. (Answer, ¶ 4). Mangan further denied that there was any just cause to warrant the suspension or revocation of his certificates and added that he would be retiring from public education. (Answer, ¶ 5).

The Board of Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Solomon Metzger heard testimony for several days and after both parties submitted post-hearing briefs, the record closed on October 28, 2005. ALJ Metzger issued his Initial Decision on November 4, 2005. *In the Matter of the Certificates of Anthony Mangan*, Docket No. EDE 6992-02 (November 4, 2005).

In that decision, ALJ Metzger recounted the testimony of two student witnesses who alleged that Mangan had touched one of the student's leg while walking past her desk. (Initial Decision, slip op. at 2). The student stated that this made her uncomfortable and that her legs were not out in the aisle. (Initial Decision, slip op. at 2). She also testified that Mangan sometimes used profanity in class, but that she was not troubled by it. (Initial Decision, slip op. at 2). The other student witness testified that Mangan told her she had "nice legs" in front of the whole class and told her she was "the best looking cheerleader." (Initial Decision, slip op. at 2). She also testified that Mangan repeatedly used profanity and made ethnic jokes in class. (Initial Decision, slip op. at 2). She stated that she saw Mangan put his hand on the other student's leg. (Initial Decision, slip op. at 2). Another witness who testified during the hearing was E.F.A., the mother of L., one of Mangan's students. (Initial Decision, slip op. at 2). She testified that her daughter arrived to class early one day and when she asked Mangan where everyone was, he retorted "I told everyone not to be here so that I can be with you." (Initial Decision,

slip op. at 2). According to what L. told her mother, Mangan then put his arm around her. (Initial Decision, slip op. at 2). In addition to the witness testimony, the record also contained Mangan's personnel file, which contained a 1997 memo administrators had prepared, listing provocative or vulgar comments attributed to Mangan. (Initial Decision, slip op. at 2). Mangan was warned that if such complaints continued, he would be dismissed. (Initial Decision, slip op. at 2).

Mangan also testified at the hearing. (Initial Decision, slip op. at 3). He acknowledged touching the student's knee, but claimed that he did it to encourage her to move her legs out of the aisle where he was walking after his verbal commands did not work. (Initial Decision, slip op. at 3). He stated that he never told a particular student that he loved her, although he did admit that he sometimes tells groups of students or a class as a whole that he loves them. (Initial Decision, slip op. at 3). He claimed this was his way of boosting their confidence. (Initial Decision, slip op. at 3). He also testified that he sometimes repeats vulgarities or stereotypes when teaching literature "as necessary to convey meaning in the story." (Initial Decision, slip op. at 3). He said that he did not otherwise curse in class or make ethnic jokes. (Initial Decision, slip op. at 3).

After reviewing all of the testimony, ALJ Metzger found that the Board of Examiners had shown by a preponderance of the credible evidence that Mangan had acted inappropriately. (Initial Decision, slip op. at 3). He further noted that the case rested on credibility and that the student witnesses who testified were credible with "no reason to fabricate." (Initial Decision, slip op. at 3). Furthermore, although ALJ Metzger noted that E.F.A.'s testimony regarding her daughter was hearsay, her daughter had given a statement to school officials and therefore the mother's information had some

corroborative value. (Initial Decision, slip op. at 3). Finally, the ALJ stated that he was not persuaded by Mangan's recitation of events. (Initial Decision, slip op. at 3).

After reviewing all of the evidence, ALJ Metzger concluded that Mangan "crossed multiple lines of propriety when he cursed in class, made ethnic jokes and flirted with and touched female students." (Initial Decision, slip op. at 3). The ALJ found that the warning Mangan received in 1997 was an aggravating factor: "Either he cannot control himself, or simply does not recognize the degree to which these are lapses." (Initial Decision, slip op. at 3). In assessing an appropriate penalty, ALJ Metzger noted that in terms of mitigation, Mangan was "a well regarded teacher of long experience." (Initial Decision, slip op. at 3). Accordingly, ALJ Metzger ordered that Mangan's certificates be suspended for two years. (Initial Decision, slip op. at 4).

On November 16, 2005, the Deputy Attorney General (DAG) representing the Board of Examiners filed exceptions to the ALJ's decisions. While the DAG agreed with the ALJ's determination that Mangan engaged in inappropriate behavior, she disagreed with the penalty imposed and instead argued that Mangan's certificates should be revoked. (Examiners Exceptions, pp. 1-2).

On December 5, 2005, Mangan also filed exceptions to the ALJ's decision. In his exceptions, Mangan claimed that the ALJ did not consider any of the factual or legal arguments he raised in his post-hearing brief because they were not alluded to in the Initial Decision. (Mangan Exceptions, p.2). Mangan also alleged that the two students who testified recalled very few specifics of any incidents involving Mangan. (Mangan Exceptions, p.4). He also argued that the ALJ relied upon hearsay in formulating his decision, both by accepting E.F.A.'s testimony and the 1997 letter of reprimand from

Mangan's personnel file, which was not referred to during the hearing. (Mangan Exceptions, pp. 5-7). Finally, Mangan argued that the ALJ did not consider the many legal cases Mangan cited on his behalf in his post-hearing brief. (Mangan Exceptions, p.7).

In reply exceptions, the DAG argued that Mangan did not show that the ALJ's credibility determinations were arbitrary or capricious or not supported by the evidence. (Reply Exceptions, pp. 2-3). She stated that the students' testimony was consistent as to the fact that Mangan cursed in class and told ethnic jokes even though they could not recall the specific words he used. (Reply Exceptions, pp. 2-3). Moreover, the DAG noted that other students had provided similar statements to the administration and the notes of those interviews were introduced as exhibits during the hearing. (Reply Exceptions, p.2). The DAG also argued that E.F.A.'s testimony, although hearsay, was properly relied upon as corroboration for other competent proof the ALJ had received. (Reply Exceptions, pp. 4-6). As to the ALJ's depiction of Mangan's testimony, the DAG cited to various transcripts to support her claim that ALJ Metzger "correctly inferred from the testimony of the respondent and the witnesses that respondent engaged in the use of vulgarities and ethnic stereotypes in the classroom." (Reply Exceptions, p. 7). Finally, in distinguishing the case law that Mangan cited in support of his position, the DAG noted that many of the cases Mangan relied upon were almost twenty years old. (Reply Exceptions, p. 8). Moreover, she asserted that several did not involve inappropriate behavior with students. (Reply Exceptions, p.8). In the more recent cases the DAG cited, the Department of Education had taken a harsher view of inappropriate

conduct with students. (Reply Exceptions, pp. 8-9). Accordingly, the DAG urged the Board to modify the Initial Decision as to penalty only. (Reply Exceptions, p.9).

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, nothing Mangan has presented has persuaded this Board that the ALJ's decision is incorrect. As the ALJ noted and the DAG recounted in her reply exceptions, the substance of the students' testimony coupled with the corroborative evidence all points to one conclusion: that Mangan's behavior with the students clearly was 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 although Mangan acted inappropriately, his long career as a well-regarded teacher militates against revocation in this case. However, this Board would be remiss in its obligation to ensure that New Jersey's students have proper role models if it did not send Mangan a strong message about its displeasure with his conduct. Consequently, The Board agrees with the ALJ that a two year suspension of Mangan's certificates is appropriate.

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 Anthony Mangan's Teacher of English and Teacher of Speech Arts and Dramatics certificates be suspended for a period of two years effective this 2nd day of March 2006. It is further ORDERED that Mangan 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.

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.