

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
JOSEPH MAZZARELLA : ORDER OF REVOCATION
_____ : DOCKET NO: 0405-276

At its meeting of June 9, 2005, the State Board of Examiners voted to issue Joseph Mazzarella an Order to Show Cause. The Order was predicated on tenure charges that his employing district had certified against him. Mazzarella currently holds a Teacher of Italian certificate, issued in July 1989, a Teacher of Spanish certificate, issued in January 1997, a Supervisor certificate, issued in September 2001, a Principal/Supervisor Certificate of Eligibility, issued in April 2003, a School Administrator Certificate of Eligibility, issued in September 2003, and a Principal certificate, issued in October 2004.¹

This case originated when the Commissioner of Education referred a tenure case to the Board of Examiners entitled *In the Matter of the Tenure Hearing of Joseph Mazzarella*, OAL Dkt. No. EDU 11954-2004 (March 21, 2005). The Ridgefield Board of Education had certified tenure charges against Mazzarella alleging that he was guilty of sexual harassment and conduct unbecoming a teacher. Ridgefield alleged, among other things, that Mazzarella had improperly telephoned female staff members of the district at home, interfered with their teaching during school hours and threatened one's tenure. Prior to the tenure hearing, the parties settled the matter and Mazzarella resigned from his tenured position in exchange for back pay. The Commissioner approved the settlement and transmitted the matter to the Board of Examiners. Thereafter, on June 9, 2005, the Board of Examiners issued an Order to Show Cause to Mazzarella based upon the behavior alleged in the tenure charges.

¹ When the Board of Examiners issued the Order to Show Cause to Mazzarella it was unaware that he had been issued a Principal certificate and therefore the Order did not include that certificate. Consequently, the current revocation order does not include Mazzarella's Principal certificate. However, on January 19, 2007, the Board voted to issue Mazzarella an Order to Show Cause to take action against his Principal certificate.

The Board sent the Order to Show Cause to Mazzarella by regular and certified mail on July 27, 2005. The Order provided that Mazzarella's Answer was due within 30 days. Mazzarella filed his Answer on August 23, 2005. In that Answer, Mazzarella admitted that he had settled his tenure matter but denied that he resigned from his position merely for back salary. (Answer, ¶ 4). Mazzarella claimed that he received additional pay and also resigned because the district eliminated his supervisory position and he did not want to return to only teaching duties. (Answer, ¶ 4). He also denied that he had ever directly threatened anyone's tenure. (Answer, ¶ 3). Mazzarella denied that there was just cause to suspend or revoke his certificates. (Answer, ¶ 5). He denied all allegations of "sexual harassment, harassment or other conduct unbecoming" contained in the affidavits appended to the tenure charges. (Answer, ¶ 6). Mazzarella also emphasized his exemplary professional career prior to the current allegations. (Answer, ¶ 6). Finally, Mazzarella claimed that the affidavits appended to the tenure charges lacked credibility. (Answer, ¶ 6a, b, c).

On October 27, 2005, the Board of Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Edith Klinger heard testimony on August 28, 29, 30 and 31, 2006. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on October 17, 2006. *In the Matter of the Certificates of Joseph Mazzarella*, OAL Dkt. No. EDE 11950-05 (October 17, 2006).

In her decision, after evaluating all of the testimony and the credibility of the witnesses, ALJ Klinger found that Mazzarella had engaged in conduct unbecoming a supervisor, principal and an administrator "in that he harassed the teaching staff he supervised, made derogatory comments about staff members to their colleagues, interfered with their ability to conduct their classes and threatened their tenure." (Initial Decision, slip op. at 56). Mazzarella continually used inappropriate language around his colleagues and intruded into their personal lives with

phone calls to their homes that were not work-related. (Initial Decision, slip op. at 54, 56). One teacher was so distressed at Mazzarella's behavior that she recorded his messages, eventually parted with her answering machine, used caller ID to screen his calls, kept a log of his phone calls during one of her vacations and blocked his e-mails and instant messages. (Initial Decision, slip op. at 50). The ALJ determined that Mazzarella was not a credible witness: "His testimony that, as Department chairperson or as director of Curriculum and Instruction, he had no supervisory authority over the Department teachers was not believable." (Initial Decision, slip op. at 50). In contrast, ALJ Klinger found that the witnesses against Mazzarella were credible and that their testimony "must be accepted as fact." (Initial Decision, slip op. at 49-50, 51).

According to the ALJ's findings, Mazzarella "created a general feeling of discomfort in the Department by bad-mouthing teachers to each other behind their backs and making individual teachers feel they were not competent to do their jobs." (Initial Decision, slip op. at 55). She also found that he interrupted three of the teachers in school to the detriment of their classes because "of his inability to control his own compulsive behavior." (Initial Decision, slip op. at 53). Although the ALJ found that Mazzarella had harassed four teachers, "three of whom were new and unable to protect themselves from him," she noted that the harassment was not sexual, but rather, the result of "Mazzarella's patent inability to distinguish the boundaries between his personal and professional relationships." (Initial Decision, slip op. at 56). She further found that "Mazzarella was unable to recognize the egregious nature of his conduct or to control it." (Initial Decision, slip op. at 57). Since he did not have the "requisite consciousness of professional boundaries or to act in a supervisory capacity and should not be allowed to continue doing so," ALJ Klinger ordered the revocation of Mazzarella's administrative certificates. (Initial Decision, slip op. at 57). However, the ALJ found "no evidence that Mazzarella's conduct in a supervisory capacity reflects upon his ability to hold a teaching position." (Initial Decision, slip op. at 57.) Accordingly, ALJ Klinger concluded that as long as

Mazzarella was “not in a position of authority there is no reason to remove him from the classroom.” (Initial Decision, slip op. at 57). The ALJ therefore ordered that no action be taken against Mazzarella’s instructional certificates. (Initial Decision, slip op. at 57).

Both Mazzarella and the Deputy Attorney General (DAG) representing the Board of Examiners filed exceptions in response to the ALJ’s Initial Decision. The DAG agreed with the ALJ’s ruling that Mazzarella had engaged in unbecoming conduct but disagreed with the penalty the ALJ assessed. The DAG claimed that Mazzarella’s “behavior is unbecoming for a teaching staff member as well as an administrator.” (DAG Exceptions, p. 3). Thus, the DAG argued that while ALJ Klinger was correct in her assessment that Mazzarella “used inappropriate language, threatened the tenure of teaching staff members, and made excessive, harassing telephone calls to their homes and classrooms, interrupting the flow of instruction, she erred in concluding that Mr. Mazzarella’s behavior did not warrant action upon his instructional certificates, as well as his administrative certificates.” (DAG Exceptions, p. 5). The DAG urged the Board of Examiners to revoke all of Mazzarella’s certificates. (DAG Exceptions, p. 5).

In his exceptions, Mazzarella claimed that the penalty ALJ Klinger had recommended in the Initial Decision was unduly harsh in light of several mitigating factors. These included Mazzarella’s lack of intent to harass and the honest misunderstanding of the nature of his relationship with his colleagues, the district’s praise for his conduct and the lack of any evidence that he received mentoring once he was made department chairperson; his exemplary employment record prior to the allegations; the apparent acceptance of his behavior by his accusers; the extensive contact between Mazzarella and one of his accusers through involvement in two Italian American organizations that provided a reasonable basis for him to contact this colleague outside of school; the lack of any adverse employment actions by Mazzarella against his accusers; the lack of any negative impact on the world languages department during the period of Mazzarella’s alleged harassment; and the admission by the district that the tenure

charges against Mazzarella, if litigated, were unlikely to result in his dismissal. (Mazzarella Exceptions, pp. 4-18). Mazzarella also argued that the ALJ's findings that he had engaged in conduct unbecoming were inconsistent with the preponderance of the credible evidence and therefore, were arbitrary, capricious and unreasonable. (Mazzarella Exceptions, pp. 18-31). He further contended that the finding of unbecoming conduct and the penalty that ALJ Klinger imposed were improperly based upon allegations that were not included in the Order to Show Cause. (Mazzarella Exceptions, pp. 31-34). Finally, Mazzarella requested that if the Board of Examiners did not reject the Initial Decision, it remand the case so that he could introduce evidence that went to the bias of individuals who testified against him. (Mazzarella Exceptions, pp. 35-50).

The DAG submitted a reply to Mazzarella's exceptions. In her reply, the DAG argued that revocation was not a disproportionate response to Mazzarella's conduct since the hearing established that he had "engaged in a pattern of inappropriate conduct that illustrates that respondent is unfit to retain his certificates." (DAG Reply, p. 2). This behavior included his use of inappropriate and derogatory terms with female subordinates, and criticism of their teaching abilities to their colleagues. (DAG Reply, pp. 2-3). Furthermore, the DAG noted that Mazzarella's argument that his penalty should be less severe because the district acquiesced to his behavior was without merit because "the testimony established that the district was unaware of the problem because the teachers were inexperienced, and therefore, afraid to come forward." (DAG Reply, p.4). The DAG also rebutted Mazzarella's contention that ALJ Klinger's fact-finding was flawed and noted that the ALJ properly weighed the evidence as well as the motivations of the various witnesses. (DAG Reply, pp. 5-6). Finally, the DAG urged the Board of Examiners to reject Mazzarella's request for a remand of the case, noting that the ALJ had properly excluded witness testimony that "was irrelevant to whether the respondent engaged in the conduct contained within the Order to Show Cause." (DAG Reply, p. 8).

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of January 18, 2007, 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 modify the Initial Decision with regard to the penalty.

The Board agrees that the ALJ correctly reviewed the evidence and testimony before her. Furthermore, 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. The ALJ found that the Board of Examiners' witnesses were credible but that the testimony of Mazzearella's supporting witnesses either demonstrated they made an "unwarranted assumption" that Mazzearella was good friends with one of the teachers who lodged a complaint against him or "was not believable for its intended purpose" to establish a voluntary exchange of inappropriate language between Mazzearella and one of the complainant teachers. (Initial Decision, slip op. at 52, 53). Clearly, based on the testimony presented, the Board of Examiners proved that Mazzearella's actions rise to the level of conduct unbecoming a teacher, pursuant to *N.J.A.C. 6A:9-17.5*.

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*. In this case there has been a finding that Mazzearella has engaged in conduct unbecoming a teaching staff member. Since Mazzearella exhibited behavior on more than one occasion that falls far short of that expected of role models, the Board of Examiners agrees with the ALJ that Mazzearella's behavior warrants the revocation of his certificates.

The Board differs with the ALJ, however, in the proper scope of the revocation. The Board finds that Mazzearella's conduct was equally inappropriate for a holder of a teaching certificate. As noted by the ALJ, his conduct was harassing and threatening. (Initial Decision,

slip op. at 56). He not only encroached upon the personal lives of the teachers he supervised but also disrupted their instruction within their classrooms because he was unable to control his compulsive behavior. (Initial Decision, slip op. at 55). Notably, he interrupted classroom instruction for reasons that did not require immediate attention. Moreover, his use of inappropriate language troubles the Board. His behavior can not be condoned and should not be present in any district. Clearly, he does not have the restraint required of a certificate holder. “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. Therefore, the only proper response to Mazzarella’s actions is the revocation of all his certificates.

Accordingly, pursuant to the Board of Examiners’ vote, it is therefore ORDERED that the Initial Decision in this matter is adopted but modified with regard to penalty. It is further ORDERED that Joseph Mazzarella’s Teacher of Italian, Teacher of Spanish and Supervisor certificates, and his Principal/Supervisor and School Administrator Certificates of Eligibility be revoked effective this 22nd day of February 2007. It is further ORDERED that Mazzarella return his certificates to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Acting Secretary
State Board of Examiners

Date of Mailing: MARCH 2nd, 2007

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