

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
ADAM MUJICA : ORDER OF REVOCATION
_____ : DOCKET NO: 0607-116

At its meeting of September 21, 2006, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Adam Mujica from his tenured position with the State-Operated School District of the City of Paterson (Paterson) for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Adam Mujica*, Docket No. EDU 10130-00 (Commissioner's Decision, September 7, 2001). Mujica currently holds a Teacher of Social Studies certificate, issued in May 1977 and a Teacher of Bilingual/Bicultural Education certificate, issued in July 1988.

This case originated on November 21, 2001, when the Paterson Board of Education certified tenure charges against Mujica. Mujica was employed as a Teacher of History. The district charged him with unbecoming conduct for making sexually inappropriate comments and gestures, including making a motion simulating masturbation and talking about his sex life. According to the district, Mujica had also inappropriately touched a fellow teacher on her legs, identified female students in class who had reported his conduct to the administration as a means to intimidate them, encouraged a student not to cooperate with the investigation into his conduct and ignored three written warnings to stop all sexually inappropriate comments and behaviors towards students.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Margaret Hayden heard

testimony on several days in April 2001. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on July 20, 2001.

In that decision ALJ Hayden found that the witnesses who testified regarding Mujica's sexual gestures and comments were credible and had no motivation to fabricate their testimony. (Initial Decision, slip op. at 36-39).

After considering all the testimony, ALJ Hayden found that Mujica's conduct was improper. The ALJ found that the district had proven most of the tenure charges it had levied against Mujica. (Initial Decision, slip op. at 40-42). Judge Hayden noted that "the charges that have been sustained separately and together amount to conduct unbecoming a teacher." (Initial Decision, slip op. at 43).

In considering the appropriate penalty, ALJ Hayden examined Mujica's record. His record was not unblemished as there was evidence of prior complaints "of inappropriate sexual misconduct in the past, *i.e.*, a 1985 suspension and a 1995 letter of warning which he said he never received." (Initial Decision, slip op. at 43). Thus, based on her review of the entire record, the ALJ concluded that "there are more than enough incidences of unbecoming conduct to sustain dismissal of Mr. Mujica." (Initial Decision, slip op. at 43). Consequently, the ALJ ordered Mujica dismissed from his tenured employment.

In a decision dated September 7, 2001, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Mujica. The Commissioner stated that he was "satisfied that the ALJ's recitation of testimony is both accurate and thorough, and that she carefully measured conflicts, inconsistencies and potential biases in deciding which testimony to credit." (Commissioner's Decision, slip op. at 57). The

Commissioner agreed with the ALJ that the local board had proven its case against Mujica with regard to five of the tenure charges of unbecoming conduct and had partially proven two of the other charges. (Commissioner's Decision, slip op. at 61). The Commissioner found that Mujica's record was not unblemished since there were two prior incidents of misconduct that were investigated. (Commissioner's Decision, slip op. at 62-63). The Commissioner therefore determined that "under these circumstances, and based on a record before him which substantiates that respondent made not only unacceptable comments to his students, but also inappropriate gestures, the Commissioner concurs with the ALJ that respondent's conduct demonstrates unfitness to remain a teacher." (Commissioner's Decision, slip op. at 63). Accordingly, the Commissioner affirmed Mujica's removal from his tenured employment with the Paterson Board of Education and transmitted the matter to the State Board of Examiners for appropriate action regarding Mujica's certificates.

On February 6, 2002, the State Board of Education affirmed the Commissioner's decision. (State Board Decision, slip op. at 1). Mujica appealed to the Appellate Division which affirmed the decision as to the inappropriateness of his conduct, but remanded the case for reconsideration of the penalty without regard to his two prior incidents, since they were never adjudicated. On remand, the Commissioner maintained "that respondent's pattern of unprofessional conduct, as demonstrated by the District herein, was sufficient to warrant his dismissal." (Commissioner Decision on remand, slip op. at 2). The Commissioner concluded that "respondent's unbecoming conduct necessitates his dismissal as a tenured teacher." (Commissioner Decision on remand, slip op. at 3). On February 4, 2004, the State Board agreed with the Commissioner that "the

pattern of conduct established by the record in this case is such that dismissal is the appropriate penalty.” (State Board Decision on remand, slip op. at 2). The State Board noted that “respondent routinely talked about sexual issues in at least the first, fifth and seventh period classes and routinely made inappropriate sexual gestures and sexual remarks over much of the school year.” (State Board Decision on remand, slip op. at 3). In affirming Mujica’s dismissal, the State Board found that “such a pattern of conduct alone would have warranted respondent’s dismissal even if he had not, as the ALJ found and the Appellate Division affirmed, attempted to manipulate one of his students to testify against him.” (State Board Decision on remand, slip op. at 3). On appeal, the Appellate Division found that since Mujica’s termination “was supported by sufficient credible evidence in the record and is neither arbitrary nor capricious, we must sustain the State Board’s determination.” *In the Matter of the Tenure Hearing of Adam Mujica, A-3883-03T1* (App. Div., October 24, 2005, slip op. at 4).

Thereafter, on November 2, 2006, the State Board of Examiners issued Mujica an Order to Show Cause as to why his certificates 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 Mujica the Order to Show Cause by regular and certified mail on November 14, 2006. The Order provided that Mujica’s Answer was due within 30 days. Mujica filed an Answer on December 5, 2006. In his Answer Mujica admitted that the district had brought tenure charges against him. (Answer, ¶ 2). He also stated that his dismissal from his tenured employment was upheld by the Commissioner, State Board and Appellate Division. (Answer, ¶ 3). In the remainder of his Answer, Mujica added

that there was no just cause to suspend or revoke his certificates and that the Order to Show Cause should be dismissed. (Answer, ¶¶ 4, 5).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on January 18, 2007, the Board sent Mujica 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, Mujica 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.

Mujica responded to the Hearing Notice on February 2, 2007. In that response, he claimed that he retired from the teaching profession as of January 2007 and was receiving a service-connected pension. (Hearing Response, p. 2.). He also stated that his certificates should be suspended retroactively rather than being revoked. (Hearing Response, p. 2). Mujica claimed that he had excellent evaluations and that he was a “competent, caring and dedicated teacher.” (Hearing Response, p. 3). He argued that because of his record, a suspension was a more appropriate response to his conduct. (Hearing response, pp. 3-4).

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Mujica’s conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of March 29, 2007, the State Board of Examiners reviewed the charges and papers Mujica filed in response to the Order to

Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to his offense were in dispute since Mujica admitted that it was appropriate to suspend his certificates. Thus, Mujica has not denied the charges in the Order to Show Cause. Accordingly, his actions regarding his sexually inappropriate comments and gestures, and his manipulating a student not to aid in the investigation against him constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Mujica'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. 6A:9-17.5*. The Board finds 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. 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. There can be no dispute that Mujica's acts of making inappropriate gestures and comments of a sexual nature during class negates any claim he can have to being a role model for students. Furthermore, his attempt to manipulate a student into not cooperating with the investigation into his behavior is reprehensible. His retirement, while a positive result that prevents him from working in public education, does not lessen this Board's belief that he is unfit to remain a certificate

holder and member of the teaching profession. Thus, the only proper response to Mujica's breach is revocation.

Accordingly, on March 29, 2007, the Board of Examiners voted to revoke Mujica's certificates. On this 3rd day of May 2007, the Board formally adopted its written decision to revoke and it is therefore ORDERED that Adam Mujica's Teacher of Social Studies and Teacher of Bilingual-Bicultural Education certificates be revoked effective this day. It is further ORDERED that Mujica 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: MAY 4, 2007

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