

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
STEPHEN FOX : ON REMAND-ORDER OF REVOCATION
_____ : DOCKET NO: 0405-256

At its meeting of May 5, 2005, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Stephen Fox from his tenured position with the New Providence Board of Education for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Stephen Fox*, Docket No. 238-7/04 (Commissioner's Decision, February 10, 2005). The Commissioner's decision noted that Fox acknowledged that he had kissed on the lips a troubled male student who had come to him for guidance. The Commissioner adopted the recommendation of the Administrative Law Judge to remove Fox from his tenured position and transmitted the matter to the State Board of Examiners for its review. (Commissioner's Decision, slip op. at 8.) Fox currently holds a Teacher of Music certificate, issued in December 1991.

At its meeting of May 5, 2005, the Board voted to issue an Order to Show Cause to Fox as to why his certificate should not be revoked on the basis of the demonstrated tenure charges. After a hearing on the papers, on September 22, 2005, the Board ordered the revocation of Fox's certificate, finding that Fox's conduct in kissing a student, particularly one who was troubled and relied upon him for counsel, negated any claim that he could have to being a role model for students. *In the Matter of the Certificate of Stephen Fox*, Dkt. No. 0405-256 (Bd. of Examiners, September 22, 2005) slip op. at 6. The Board concluded that Fox's egregious behavior far outweighed his unblemished record. *Ibid.* On May 3, 2006, the State Board of Education affirmed the Board of Examiners' decision. *In the Matter of the Revocation of the Teaching Certificate of*

Stephen Fox, Dkt. No. 53-05 (St. Bd. Decision, May 3, 2006). However, on August 29, 2007, the Appellate Division of the Superior Court of New Jersey reversed the State Board's decision, concluding that Fox was entitled to a hearing on the sanction issue. *In the Matter of the Revocation of the Teaching Certificate of Stephen Fox by the State Board of Examiners*, Dkt. No. A-5021-05T3 (App. Div. August 29, 2007) (Unpublished Opinion). Accordingly, the Court remanded the matter to the State Board of Education for referral to the Office of Administrative Law (OAL) for a hearing limited to the issue of the appropriate sanction. *Id.* at 11.

In accordance with the Court's order, the Board transmitted the matter to the OAL. A hearing was conducted before Administrative Law Judge (ALJ) Margaret Monaco on March 20, April 1 and April 2, 2009. After the record closed, ALJ Monaco issued her Initial Decision on April 29, 2010. *In the Matter of the Certificate of Stephen Fox*, Dkt. No. EDE 3083-08 (Initial Decision, April 29, 2010).

In that decision, ALJ Monaco noted that "the Commissioner has already determined that Fox engaged in conduct unbecoming a teacher predicated on his interactions with [the student] as previously detailed. Accordingly, the pivotal issue presented is the appropriate licensing sanction to be imposed for the unbecoming conduct proven in the tenure proceeding." *Id.* at 29. She reviewed the testimony presented by Fox's eleven character witnesses and found that they presented "sincere and credible testimony addressing Fox's abilities as a teacher." *Id.* at 7. She found that the character witnesses "confirmed that Fox was a talented educator, who made outstanding contributions to his students, the school and the community." *Ibid.* The ALJ, however, accorded limited weight to the testimony presented by the expert witnesses on behalf of

both Fox and the Board of Examiners. *Id.* at 29. According to ALJ Monaco, the Board's expert did not provide testimony that lent "substantial guidance based on a particular expertise as to the appropriate sanction." *Ibid.* Similarly, Fox's expert gave testimony that, "while providing insight into what generally occurs in a therapeutic relationship, amounted to an 'assumption' as to what caused the incident between Fox and the student, which was, in part, based upon unsupported information and irreconcilable with matters already established in the tenure proceeding." *Ibid.*

Reviewing all of the evidence, the ALJ opined that Fox's lengthy career as a teacher and his unblemished, exemplary record were mitigating factors in Fox's favor. *Id.* at 30. She also noted that Fox was "well regarded as a teacher and held in high esteem by colleagues, parents and students." *Ibid.* ALJ Monaco further stated that "at the hearing, Fox took responsibility for his woefully misguided action and exhibited sincere regret for the incident." *Ibid.* However, notwithstanding all of the factors leaning toward mitigation, the ALJ assessed that "the nature of Fox's transgression must be balanced in the equation and unquestionably is a critical consideration in this case." *Ibid.*

ALJ Monaco reiterated the Commissioner's findings that, in presenting himself as a concerned adult and counselor to a troubled student and ultimately kissing the student on the lips, Fox had acted wholly outside the boundaries of professional propriety. *Id.* at 30-31. The ALJ determined that Fox' inappropriate behavior "contravenes Fox's role as an educator and transcends the boundaries of conduct that can be tolerated from a teacher." *Id.* at 31. The ALJ could not excuse Fox's behavior stating that, "the fact that Fox may have had good intentions and his conduct may not have been predatory in nature is no excuse for his serious error in judgment and does not undo the harm that his actions

may have caused to the student.” *Ibid.* ALJ Monaco therefore recommended revoking Fox’s certificate, concluding that “the mitigating evidence offered at the hearing [was] greatly outweighed by the gravity of Fox’s infraction.” *Id.* at 32. Neither party submitted Exceptions in the case.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of June 10, 2010, the Board reviewed the Initial Decision. After full and fair consideration of the Decision, 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. As noted above, ALJ Monaco found that although Fox was a dedicated and talented teacher with an exemplary and unblemished record, his transgression was so egregious as to outweigh any mitigation he established. *Id.* at 30-32. The Board of Examiners agrees. Fox has clearly engaged in conduct that negates his status as a role model for students. As the ALJ correctly noted and this Board has long maintained “a ‘gifted’ teacher who engages in inappropriate physical contact with an emotionally distressed child is no less culpable than any other teacher who engages in the same inappropriate conduct.” *Id.* at 32. The Examiners therefore conclude that the only appropriate response to Fox’s breach is the revocation of his teaching certificate.

Accordingly, on June 10, 2010, the Board of Examiners voted to adopt the Initial Decision and revoke Fox’s teaching certificate. On this 22nd day of July 2010, the Board of Examiners formally adopted its written decision to adopt the Initial Decision in this matter, and it is therefore ORDERED that Stephen Fox’s Teacher of Music certificate be

hereby revoked effective immediately. It is further ORDERED that Fox return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing:

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A. 18A:6-38.4*.

RRH:MZ:th