

SBE #0405-256
SB # 53-05

IN THE MATTER OF THE REVOCATION :
OF THE TEACHING CERTIFICATES OF : STATE BOARD OF EDUCATION
STEPHEN FOX BY THE STATE BOARD OF : DECISION
EXAMINERS. :

Decision by the State Board of Examiners issued on November 15, 2005

For the Petitioner-Respondent, Melanie Brookes, Deputy Attorney General
(Zulima V. Farber, Attorney General of New Jersey)

For the Respondent-Appellant, Oxfeld Cohen, P.C. (Benjamin A. Spivack,
Esq., of Counsel)

Appellant in this matter is a tenured music teacher who was dismissed from his teaching position as the result of tenure charges brought against him by the New Providence Board of Education. Those charges alleged that appellant had established a personal relationship with a 15-year-old student that culminated when appellant kissed him on the lips. A hearing on the tenure charges was held before an Administrative Law Judge ("ALJ"), who sustained the charges and recommended that appellant be dismissed from his tenured position. The Commissioner adopted the ALJ's initial decision and directed appellant's dismissal. The matter was then referred to the State Board of Examiners for consideration of whether suspension or revocation of appellant's teaching certification was warranted.

On May 18, 2005, the State Board of Examiners issued an order to show cause why appellant's certification should not be suspended or revoked. Appellant responded that the facts in the case did not justify such action in view of his unblemished record.

By letter of July 15, 2005, appellant was notified by the Board of Examiners that because it appeared that no material facts concerning the tenure charges were in dispute, the Board of Examiners would be considering the matter on the basis of written submissions. Appellant was offered the opportunity to submit written arguments as to whether the conduct established by the tenure charges warranted suspension or revocation of his certification. In response, appellant asserted that he was entitled to a hearing at the Office of Administrative Law and that he was entitled to present mitigating evidence before any action could be taken against his certification.

At its meeting on September 22, 2005, the State Board of Examiners determined that there were no material facts in dispute with respect to appellant's conduct and rejected his assertion that he was entitled to a plenary hearing at the Office of Administrative Law. In doing so, the Board of Examiners agreed with appellant that he was entitled to present mitigating evidence, but it stressed that it had afforded him the opportunity to do so when it had invited him to submit written arguments, documents, certifications and affidavits in support of his case.

On the basis of the facts established in the tenure proceedings, and having considered appellant's unblemished record, the State Board of Examiners concluded that revocation of appellant's certification as a teacher was warranted notwithstanding that he may have been a good teacher in all other respects. In doing so, the Board of Examiners found that "[t]here can be no dispute that kissing a student, particularly one

who is troubled and relies upon a teacher for counsel, negates any claim that [appellant had] to being a role model for students.” State Board of Examiners’ Decision, slip op. at 6.

On appeal to the State Board of Education, appellant continued to argue that he was entitled to a hearing at the Office of Administrative Law before action could be taken to suspend or revoke his certification. He further argued that the Board of Examiners’ determination could not be sustained in the absence of consideration of the mitigating evidence that appellant might present at such a hearing.

Appellant, however, did not indicate what circumstances he intended to demonstrate that would warrant mitigation of the penalty imposed by the Board of Examiners. Therefore, by letter of March 28, 2006, the State Board of Education’s Legal Committee notified appellant that he was being afforded the opportunity to inform the State Board of the specific mitigating circumstances that he intended to demonstrate.

On April 12, 2006, appellant submitted the details of the mitigating evidence that he would present concerning the revocation of his certification if he were granted a hearing at the Office of Administrative Law. In his submission, appellant advised the State Board that he would present witnesses, evidence of his outstanding teaching record, newspaper articles showing recognition of his work, awards and evidence of his contributions to the community. He also included a list of the witnesses he would present to show his teaching ability and character, and he specified the documents he would present to demonstrate his teaching ability, recognition of his work and his community involvement.

After considering appellant's proffer, we agree with the Board of Examiners that a hearing at the Office of Administrative Law is not warranted in this case. There is no dispute as to whether appellant was an outstanding teacher, a fact that was considered both by the ALJ and Commissioner in the tenure proceedings and by the Board of Examiners when it determined that his certification should be revoked. Even accepting that appellant's teaching performance and community involvement were as he detailed in his submission to us, and taking into account the fact that his record had been unblemished prior to this incident, we fully concur with the Board of Examiners that appellant's conduct as established in the tenure proceedings was of such character and seriousness as to unequivocally demonstrate his unfitness to teach.

As established in the tenure proceedings, the appellant was well aware that the student involved was struggling with his sexual orientation and a difficult home life and was being bullied at school when he presented himself to the student as a concerned adult and counselor and encouraged his confidences. As the ALJ found in the tenure proceedings, appellant was aware of the student's emotional distress and quite probably knew that the student had been subjected to continuing sexual abuse by a 39-year-old man when he had physical contact with the student and kissed him on the lips. Furthermore, the record clearly shows that appellant's conduct further damaged a student who, as appellant knew, already had serious emotional problems. As the Commissioner concluded with respect to the tenure charges, appellant's behavior reflected "a clear violation of his obligation to educate, not endanger, and protect, not exploit." Commissioner's Decision, slip op. at 7. Like the Board of Examiners, we find that appellant's breach of trust was so egregious as to outweigh his previously

unblemished record. Nor can his behavior be mitigated by the fact that he was a good teacher in other respects. Rather, his behavior demonstrates his unfitness to teach, and, accordingly, we conclude, as did the Board of Examiners, that the only proper response is revocation of his certification. Cf. IMO Suspension or Revocation of the License Issued to Kenneth Zahl, M.D., ___ N.J. ___ (2006). Therefore, we affirm the decision of the State Board of Examiners.

May 3, 2006

Date of mailing _____