

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF	:	STATE BOARD OF EXAMINERS
STEPHEN FOX	:	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. EDU 7955-04 (Commissioner's Decision, February 10, 2005). Fox currently holds a Teacher of Music certificate, issued in December 1991.

This case originated on July 12, 2004, when the New Providence Board of Education certified tenure charges against Stephen Fox. The district charged him with unbecoming conduct for establishing a personal relationship with a student which culminated in physical contact.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Edith Klinger heard testimony on October 14, 2004. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on December 10, 2004.

In that decision ALJ Klinger found that Fox had established a relationship with a student, J.F. (Initial Decision, slip op. at 6). She found Fox had kissed J.F. on the lips in April 2002. (Initial Decision, slip op. at 6). ALJ Klinger found that Fox engaged in this conduct while presenting himself as a concerned adult and counselor. (Initial Decision, slip op. at 6). In fact, Fox had admitted to kissing J.F. on the lips during his testimony. (Initial Decision, slip op. at 2). ALJ Klinger also found that this conduct occurred during

a period when Fox knew J.F. was in great emotional distress. (Initial Decision, slip op. at 6).

After considering all the testimony, ALJ Klinger found that Fox's conduct was improper and constituted sexual harassment in violation of the district's policy since it was "an unwelcome physical contact that altered J.F.'s educational environment in an offensive way." (Initial Decision, slip op. at 7). The ALJ found that Fox's conduct changed J.F.'s school environment for the worse and that the district policy gave Fox sufficient notice that his conduct could lead to termination. (Initial decision, slip op. at 7). ALJ Klinger also concluded that Fox's conduct constituted "unbecoming conduct and 'other just cause' for discipline." (Initial Decision, slip op. at 8).

In considering the appropriate penalty, ALJ Klinger examined Fox's unblemished record. That mitigating factor, however, did not outweigh Fox's improper conduct. (Initial Decision, slip op. at 8-9). ALJ Klinger found that because Fox had an excellent and unblemished record, he was able to place himself "in the role of counselor, as well as teacher, to an extremely troubled adolescent." In fact, Fox's status as an "icon" made J.F. afraid to report Fox. (Initial Decision, slip op. at 9). As the ALJ noted, "[t]he damage to J.F. was immeasurable because of the student's overwhelming emotional problems and Fox's special position of trust, over and above even that of a teacher." (Initial Decision, slip op. at 9). Thus, based on her review of the entire record, the ALJ concluded that Fox's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 10). Consequently, the ALJ ordered Fox dismissed from his tenured employment. (Initial Decision, slip op. at 10).

In a decision dated February 10, 2005, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Fox. (Commissioner's Decision, slip op. at 6-7). The Commissioner agreed with the ALJ that the local board had proven its case against Fox with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 6-7). The Commissioner found that Fox's "admitted behavior with respect to fifteen-year-old student, J.F., is wholly outside the boundaries of professional propriety and inimical to the expectations placed on teaching staff members, and hence is unquestionably conduct unbecoming a teacher." (Commissioner's decision, slip op. at 6-7). Furthermore, the Commissioner agreed with the ALJ that despite Fox's unblemished record, the seriousness of Fox's admitted conduct greatly outweighed his exemplary service. (Commissioner's Decision, slip op. at 8-9). Accordingly, the Commissioner affirmed Fox's removal from his tenured employment with the New Providence Board of Education and transmitted the matter to the State Board of Examiners for appropriate action regarding Fox's certificate. (Commissioner's Decision, slip op. at 9).

Thereafter, on May 5, 2005, the State Board of Examiners issued Fox an Order to Show Cause as to why his certificate 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 Fox the Order to Show Cause by regular and certified mail on May 18, 2005. The Order provided that Fox's Answer was due within 30 days. Fox filed an Answer on May 31, 2005. In his Answer, Fox did not deny that the district had brought tenure charges against him or that he had been dismissed from his tenured

position. (Answer, ¶ 2). In the remainder of his Answer, Fox added that the facts in the case and his unblemished record did not justify the suspension or revocation of his certificate. (Answer, Affirmative Defenses).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on July 15, 2005, the Board sent Fox 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 and his dismissal from his tenured employment, Fox 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 certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

In his response to the Hearing Notice, Fox claimed that he was entitled to a hearing at the Office of Administrative Law (OAL) regarding the Board's action against his certificate. (Hearing Response, pp. 4-9.). He also argued that he was entitled to present mitigating evidence in support of his argument that his certificate should not be suspended or revoked. (Hearing Response, pp. 10-14).

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Fox's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of September 22, 2005, the State Board of Examiners reviewed the charges and papers Fox filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no

material facts related to Fox's offense were in dispute since he did not dispute that the Commissioner had found that his personal relationship with J.F. constituted unbecoming conduct. In the proceeding before the Commissioner, Fox admitted that he kissed J.F. on the lips. Thus, Fox has not denied the charges in the Order to Show Cause. Accordingly, his actions regarding J.F. constitute conduct unbecoming a certificate holder.

As to Fox's contention that this matter should proceed to a plenary hearing rather than be decided on the papers, pursuant to N.J.S.A. 52:14F-8(b), an agency head, such as the State Board of Examiners may conduct a hearing directly. *In re Uniform Adm'n Procedure Rules*, 90 N.J. 85, 104 (1982). Moreover, the Board of Examiners has the discretion to determine whether there are contested issues of material fact necessitating an evidentiary hearing and making it appropriate to transmit the matter to the OAL. N.J.S.A. 52:14F-7; *Quad Enterprise v. Paramus*, 250 N.J. Super. 256 (App. Div. 1991). If, as in this case, there are no contested issues of material fact, there is no need for transmittal since the Board of Examiners can hear the case based on a written record. N.J.A.C. 6A:9-17.7(f).

Moreover, Fox also argues that he is entitled to proffer mitigating evidence in opposition to the Board's Order to Show Cause. The Board does not dispute this and, in fact, invited Fox to submit any written arguments, documents, certifications and affidavits to support his case. (Hearing Notice, p.1). Although Fox has declined to do so and instead argues for a hearing wherein he might submit this information via testimony, the Board did consider his unblemished record in determining whether there existed any circumstances that would excuse his conduct.

The State Board of Examiners must now determine whether Fox's offense as set forth in the Order to Show Cause, represents just cause to act against his certificate 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 kissing a student, particularly one who is troubled and relies upon a teacher for counsel, negates any claim that Fox can have to being a role model for students. As the Commissioner noted, Fox stood "in a fiduciary relationship with all of his students." (Commissioner's Decision, slip op. at 8). He owed each of them a duty of trust and loyalty which required him to act in their best interests at all times. "That [Fox] here abrogated his duty of trust to J.F. is undeniable. That he did so knowing J.F. was already an extremely conflicted and troubled young man makes his actions here all the more outrageous and reprehensible." (Commissioner's Decision, slip o-p. at 8). The Board of Examiners agrees that Fox's egregious behavior far outweighs his unblemished record in determining its penalty. Moreover, to trivialize the nature of his offense by arguing that he was in all other respects, a good teacher, again victimizes J.F. J.F.'s reticence to

report Fox was marked by his assumption that adults were not worthy of his trust. This Board seeks to prove otherwise. Consequently, the only proper response to Fox's breach is revocation.

Accordingly, it is therefore ORDERED that Stephen Fox's Teacher of Music certificate be revoked on this 22nd day of September 2005. It is further ORDERED that Fox return his certificate 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: NOVEMBER 15, 2005

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