

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
ERNIE CHAVEZ : ORDER OF REVOCATION
_____ : DOCKET NO: 776-06/03

At its meeting of June 12, 2003, the State Board of Examiners voted to issue Ernie Chavez an Order to Show Cause. The Order was predicated on tenure charges that his employing district had certified against him. Chavez currently holds a Teacher of Industrial Arts certificate, issued in December 1978.

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 Ernest Chavez*, OAL Dkt. No. 03312-02 (March 14, 2003). The Phillipsburg Board of Education had certified tenure charges against Chavez alleging he had engaged in unbecoming conduct. Phillipsburg alleged, among other things, that Chavez had engaged in inappropriate horseplay with a female student, had inappropriately touched female students and had made inappropriate comments to his students. Prior to the tenure hearing the parties settled the matter and Chavez 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 12, 2003, the Board of Examiners issued an Order to Show Cause to Chavez based upon the behavior alleged in the tenure charges.

The Board sent the Order to Show Cause to Chavez by regular and certified mail on July 30, 2003. The Order provided that Chavez' Answer was due within 20 days. Chavez filed his Answer on August 18, 2003. In that Answer, Chavez admitted that he had settled his tenure matter but denied that he resigned from his position for merely back salary. (Answer, ¶ 4). He

also denied that there was just cause to suspend or revoke his teaching certificate. (Answer, ¶ 5). Chavez stated that by settling the tenure matter he did not admit liability or guilt regarding any of the factual allegations set forth in the tenure charges. (Answer, ¶ 5). He added that he was deeply dedicated to teaching and vehemently denied any wrongdoing. (Answer, ¶ 6). He also stated that the Prosecutor's Office and the Division of Youth and Family Services (DYFS), both of which investigated the charges, found no wrongdoing. (Answer, ¶ 6). Finally, Chavez claimed that all of his evaluations had been exemplary. (Answer, ¶ 6).

The Board of Examiners transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Jeffrey Gerson heard testimony on February 14, 15 and 17, 2005. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on November 28, 2005. *In the Matter of the Certificate of Ernest Chavez*, OAL Dkt. No. EDE 11443-03 (November 28, 2005).

In that decision, after evaluating all of the testimony and the credibility of the witnesses, ALJ Gerson found that Chavez had engaged in unbecoming conduct on at least two occasions. (Initial Decision, slip op. at 25). In one instance, Chavez had made a student, S.S., uncomfortable by making inappropriate comments about sleeping at his house. Specifically, Chavez said "you can sleep at my house if you like, ... I am not saying you will get much sleep." (Initial Decision, slip op. at 25). He also stated "I'm not gonna bite, unless you want me to." (Initial Decision, slip op. at 25). In another incident, Chavez had engaged in inappropriate "horseplay" with a student, B.V. (Initial Decision, slip op. at 25). During this episode, Chavez and the student tried to put ice down each other's shirts. (Initial Decision, slip op. at 25). The ALJ found that Chavez had "confirmed that he unquestionably acted inappropriately when putting ice down a female student's blouse and subsequently engaging in horseplay which from

his own testimony occurred in the classroom in front of his whole class with him exercising little or no control.” (Initial Decision, slip op. at 25). Although the ALJ found that the touching between Chavez and B.V was not sexual in nature, he concluded that “it very well could have appeared that way to the students who observed it.” (Initial Decision, slip op. at 26). Moreover, ALJ Gerson determined that even if he accepted Chavez’ recitation of the incident involving B.V. as factually accurate, Chavez “compromised his own dignity as a teacher and reduced himself to a teenager’s mentality all while being responsible for a class of impressionable students. By his own description, his conduct was ‘unbecoming’.” (Initial Decision, slip op. at 26). Accordingly, ALJ Gerson concluded that Chavez was guilty of unbecoming conduct and that revocation of his teaching certificate was warranted. (Initial Decision, slip op. at 26). The ALJ therefore ordered the revocation of Chavez’ Teacher of Industrial Arts certificate. (Initial Decision, slip op. at 26).

In response to the Initial Decision, Chavez filed exceptions challenging the ALJ’s revocation of his teaching certificate. Chavez argued that the ALJ erred in not discussing the testimony of another witness, D.W., because that witness had testified to an alleged conspiracy among students with regard to the incident between Chavez and B.W. (Exceptions, pp. 3-8). In addition, Chavez challenged the credibility of some of the Board’s witnesses. (Exceptions, pp. 9-15). Finally, Chavez argued that even if the ALJ correctly determined that he had engaged in unbecoming conduct, revocation of his teaching certificate was too harsh a penalty. (Exceptions, pp. 16-18).

In reply exceptions, the Deputy Attorney General (DAG) representing the Board of Examiners argued that the ALJ’s credibility determinations could only be set aside if they were arbitrary and capricious and wholly unsupported by the record. (Reply Exceptions, p. 2). The

DAG claimed that the ALJ was correct in dismissing D.W.'s testimony because he had given two contradictory statements, both under oath, regarding the incident involving B.V. (Reply Exceptions, pp. 2-4). The DAG also argued that ALJ Gerson was correct in his assessment that S.S.'s testimony was compelling and convincing since, unlike Chavez, she had "nothing to gain or lose through her testimony." (Reply Exceptions, pp. 5-6). Finally, the DAG argued that Chavez had engaged in inappropriate behavior by engaging in horseplay with a female student in front of the entire class and in making sexually suggestive comments to another female student. (Reply exceptions, p. 9). According to the DAG, Chavez actions demonstrated "extremely poor judgment and suggest that Chavez lacks the level of self restraint and appropriate decorum expected from a teacher." (Reply Exceptions, pp. 9-10).

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of March 30, 2006, 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 adopt the Initial Decision. The Board agrees that the ALJ correctly reviewed the evidence and testimony before him.

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 not only the Board of Examiners' witness, but also Chavez himself gave testimony that supported a finding that Chavez had engaged in inappropriate behaviors in his classroom. (Initial Decision, slip op. at 24-26). Clearly, based on the testimony presented, Chavez' 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 Chavez has engaged in conduct unbecoming a teacher. Since Chavez 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 Chavez' behavior warrants the revocation of his certificate.

Accordingly, pursuant to the Board of Examiners' vote, it is therefore ORDERED that the Initial Decision in this matter is adopted. It is further ORDERED that Ernie Chavez' Teacher of Industrial Arts certificate be revoked effective this 4th day of May 2006. It is further ORDERED that Chavez 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: MAY 10, 2006

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