

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JOHN CERUTTI : ORDER OF SUSPENSION
_____ : DOCKET NO: 516-04/99-202

At its meeting of May 4, 1999, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed John Cerutti from his tenured position with the Department of Human Services, Division of the Blind and Visually Impaired for charges of unbecoming conduct. Cerutti currently holds a Teacher of the Handicapped certificate.

This case originated on December 11, 1996 when the New Jersey Commission for the Blind and Visually Impaired (hereafter Commission) certified tenure charges against respondent, John Cerutti. Cerutti was employed as an orientation and mobility instructor. The Commission charged him with unbecoming conduct for engaging in a sexual relationship with his client, C.B., falsifying work records in an attempt to conceal his wrongful use of state time and threatening and intimidating C.B. when Cerutti learned that she was pregnant.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Ken Springer heard testimony on several days in March 1998. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on November 12, 1998.

In that decision ALJ Springer found that Cerutti first began working as C.B.'s instructor in 1985. From 1985 through 1988, Cerutti trained C.B. on cane travel and using a guide dog. (Initial Decision, slip op. at 4). Cerutti and C.B. became good friends

after her training ended and a sexual relationship began in late 1991. Cerutti indicated that this relationship began at C.B.'s urging, but Jamie Hilton, the Director of the Commission testified that C.B., although an adult, was "emotionally frail and fragile" and "easy prey." (Initial Decision, slip op. at 4).

In 1994, C.B. was referred for additional mobility training since her guide dog was dying. Since he was the only instructor assigned to the county in which C.B. lived, Cerutti was given her case. In his work reports, Cerutti indicated that he provided instruction to C.B. on thirteen occasions between December 1994 and May 1995. On the other hand, C.B. testified that she and Cerutti had had sexual relations on a number of dates that Cerutti had listed as work sessions. (Initial Decision, slip op. at 5-8). When he was confronted with allegations of his sexual involvement with C.B., Cerutti initially denied it. He later claimed that any sexual acts took place during lunch and therefore on his own time. (Initial Decision, slip op. at 8).

The testimony indicated that Cerutti and C.B. ended their relationship on September 19, 1996, when she announced to him that she was pregnant with his child. Cerutti had just told C.B. that his wife was pregnant and demanded that C.B. have an abortion. (Initial Decision, slip op. at 10). Thereafter, Cerutti left several messages on C.B.'s answering machine including one threatening to tell her family an untrue story that she had been having an affair with her sister's husband. (Initial decision, slip op. at 10). Cerutti ultimately contributed \$1,100 toward the cost of C.B.'s abortion. (Initial Decision, slip op. at 11).

After considering all the testimony, ALJ Springer found that Cerutti's conduct was improper. The Judge found that Cerutti had taken advantage of C.B.'s vulnerability

and carried on a sexual affair while she was his client. (Initial Decision, slip op. at 9-10). He also found that Cerutti threatened to destroy C.B.'s reputation when she requested his help after announcing her pregnancy. (Initial Decision, slip op. at 11). Judge Springer also noted that Cerutti's threats were made with the intent to avoid responsibility for his own actions. Moreover, the ALJ stated that these were not "private conversations that C.B. recorded without [Cerutti's] consent. Rather, they were messages which Cerutti left on her answering machine in full knowledge that his words would be recorded." (Initial Decision, slip op. at 11). The Judge found that the import of these messages was to make C.B. fearful of Cerutti.

Based upon the foregoing facts, the ALJ concluded that the Commission had demonstrated that Cerutti's conduct was unbecoming a teaching staff member. Judge Springer determined that the appropriate penalty was dismissal: "Coupled with his past record of violations, the circumstances of the current offense are so detrimental to the welfare of his client and to his continued effectiveness as an instructor that termination is necessary." (Initial Decision, slip op. at 14).

In a decision dated February 9, 1999, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Cerutti. The Commissioner agreed with the ALJ that the Commission had proven its case against Cerutti with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 21). The Commissioner found that notwithstanding Cerutti's exceptions, in which he challenged the ALJ's credibility determinations, there was no basis to challenge the ALJ's findings. (Commissioner's Decision, slip op. at 21). Accordingly, the Commissioner affirmed Cerutti's removal from his tenured employment with the Commission for the Blind and

Visually Impaired and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Cerutti's certificate. (Commissioner's Decision, slip op. at 21).

Thereafter, on May 4, 1999, the State Board of Examiners issued an Order to Show Cause to Cerutti 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 Order to Show Cause was mailed to Cerutti by regular and certified mail on May 4, 1999. The Order provided that if respondent desired to file an Answer to the Order that Answer must be filed within 20 days. Cerutti filed an Answer on May 28, 1999. In his Answer Cerutti admitted that the Commission had brought tenure charges against him which were sustained and led to his dismissal. He also stated that he had not engaged in any actions that were unbecoming or warranted his removal. (Answer, ¶¶ 1-5). In the remainder of his Answer, Cerutti added that the Board of Examiners did not have just cause to revoke or suspend his certificate. (Answer, ¶¶ 6-7).

In addition to his Answer, Cerutti submitted a copy of the post-hearing brief he had filed in his tenure hearing. In that brief he argued that he and C.B. were both consenting adults and that, although he did not have a relationship with C.B. while he was her instructor, the Commission had no written policy prohibiting relationships between clients and instructors. (Brief, pp.2-3). The remainder of Cerutti's brief attacked C.B.'s credibility and her testimony before the ALJ. (Brief, pp.3-22).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on July 26, 1999, a hearing notice was mailed by regular and certified mail to Cerutti. The notice explained that, since it

appeared no material facts were in dispute regarding the tenure charges, respondent 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.

Cerutti responded to the Hearing Notice on August 19, 1999. In that response, Cerutti claimed that the only evidence presented in support of his termination was the Commission's contention that it was inappropriate for him to have a relationship with C.B. (Hearing Response, p.1.). Cerutti claimed that C.B. was a very capable adult who was 31 at the onset of their relationship. He also claimed that C.B. was not a client of any agency of the Commission's at the inception of the relationship. Cerutti also stated that he had suffered enough through the loss of his position and reputation in the blind community. (Hearing Response, p.1). Finally, Cerutti argued that C.B.'s own thank you letter to him demonstrated that he had actually provided services to her. (Hearing Response, p.2).

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Cerutti's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of November 4, 1999, the State Board of Examiners reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Cerutti's offense were in dispute since he

admitted that the Commission's tenure charges had been sustained and led to his dismissal. Thus, while he denies that the Board has a basis for revoking or suspending his certificate, Cerutti has not denied that he has lost his tenure based on the charges in the Order to Show Cause. Accordingly, his actions regarding C.B. and his misuse of State time constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Cerutti'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. 6:11-3.6(a)1. After an independent review of the record, we find 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. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. 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. While Redcay and Sammons specifically address the issue of tenure, this Board is farsighted enough to realize that their principles apply equally in cases that involve the loss of certification.

In this case, there can be no dispute that Cerutti had a relationship with a client whom he was teaching. While it is true that C.B. was an adult, she was still in a vulnerable position and reliant upon Cerutti to instruct her in the use of a cane because of

the loss of her guide dog Nia. Instead, Cerutti abandoned all pretense of being a role model and violated teacher-student boundaries that must be respected, even between adults. He misused C.B.'s trust and conveniently forgot that teachers easily influence their students, regardless of age.

Moreover, Cerutti falsified time records in order to disguise his misuse of State time. Furthermore, even now, he has not taken even partial responsibility for his actions. Instead his submissions are characterized by placing blame solely at the feet of C.B. because of her supposed inability to deal maturely with his rejection of her. All of these actions point squarely to a finding of conduct unbecoming a certificate holder.

The only issue that remains before the Board therefore is the appropriate sanction to impose. The Board acknowledges that there is a substantive difference between this case involving two adults and those cases where certificate holders have become involved with minor students. Moreover, the record indicates that Cerutti's relationship with C.B. began before she became a client of his for the second time. Due to these mitigating circumstances, the Board believes that revocation would be too severe a penalty in this matter.

The Board, however, must underscore the need to send a strong message regarding appropriate teacher conduct and the regulation of the teaching profession. In fact, the Supreme Court of this State agrees that eliminating undesirable members from a profession is a necessary public service:

The purpose of a disciplinary sanction, whether it be a reprimand, suspension, or a disbarment, is not punishment, but maintenance of the integrity and purity of the bar, elimination of unfit persons from the practice of law, and vindication of public confidence in the bar and the administration of justice.

In Re Logan, 70 N.J. 222,227 (1976). The Court's words in Logan, while referring to attorneys, are pertinent to teachers as well. Revocation proceedings, when taken to the ultimate conclusion, allow the profession to maintain high standards as well as protecting the public from those teachers who ought not to be in a classroom. Here, Cerutti's lapse in judgment is not so unconscionable as to bar him from a classroom forever. It is sufficiently serious, however, to warrant his suspension from the profession for a substantial period of time. The Board believes that a six-year suspension of Cerutti's certificate will protect the public while not unduly punishing Cerutti.

Accordingly, it is therefore ORDERED that John Cerutti's Teacher of the Handicapped certificate be suspended for a period of six years beginning on this 4th day of November 1999 and ending on the first day of November 2005. It is further ORDERED that Cerutti return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: February 9, 2000

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

IBG:MZ:kb:johncerutti