

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
MANUEL N. MARRERO : ORDER OF SUSPENSION
_____ : DOCKET NO: 494-01/99-216

At its meeting of January 21, 1999, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Manuel N. Marrero from his tenured position with the State-Operated School District of the City of Jersey City for charges of unbecoming conduct. Marrero currently holds a School Psychologist certificate.

This case originated when the State-Operated School District of the City of Jersey City Board of Education certified tenure charges against respondent, Manuel Marrero. Marrero was employed as a School psychologist. The district charged him with unbecoming conduct for engaging in inappropriate and suggestive conduct with one student and using another student to pass inappropriate messages to a female teacher.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Mumtaz Bari-Brown heard testimony on several days in October 1995. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on June 28, 1996.

In that decision ALJ Bari-Brown found that Marrero had asked a female special education student certain suggestive questions and had made suggestive comments while he was conducting a test. (Initial Decision, slip op. at 5-6, 7-12). Judge Bari-Brown also found that Marrero had written inappropriate notes to a female teacher in the 1993-94 school year and had them passed to her through a student. The ALJ also found that Marrero continued to send this teacher notes even after she told him she was not interested after receiving his first letter. (Initial Decision, slip op. at 12). After reviewing all of the testimony, the ALJ concluded that the District had proven its charges by a preponderance of the credible evidence. Accordingly, the Judge concluded that Marrero had engaged in conduct unbecoming a staff member. (Initial Decision, slip op. at 13).

In assessing the appropriate penalty, the ALJ recalled that Marrero had had an unblemished record until these incidents. Furthermore, many colleagues and former students testified on his behalf and spoke

of what a dedicated professional he was. Nevertheless, the ALJ found that “[t]hese mitigating factors do not negate conduct which is improper or might be viewed improper by the ordinary person.” (Initial Decision, slip op. at 13-14). ALJ Bari-Brown found that Marrero’s role as part of the Child Study Team put him in contact with students who are “emotionally, physically or educationally challenged....and whose deficits may cause them to be more vulnerable and impressionable than the non-educationally disabled student....” (Initial Decision, slip op. at 14). Accordingly, since the ALJ held that Marrero had “engaged in a pattern of improper interaction with a minor student whose interest he is mandated to safeguard,” she concluded that he should be dismissed from his tenured position as a school psychologist. (Initial Decision, slip op. at 14-15).

In a decision dated October 3, 1996, the Commissioner of Education affirmed the ALJ’s Initial Decision as to the tenure charges against Marrero. The Commissioner agreed with the ALJ that the local board had proven its case against Marrero with regard to the tenure charges of unbecoming conduct. (Commissioner’s Decision, slip op. at 20). The Commissioner found that despite numerous exceptions Marrero raised to the ALJ’s ruling, the ALJ had carefully considered all of the testimony and weighed the credibility of the witnesses. (Commissioner’s Decision, slip op. at 20-21). Accordingly, the Commissioner would not challenge “the ALJ’s credibility determinations and resultant conclusions with respect to the charges against respondent in that the ALJ was in the best position to observe the demeanor of the witnesses and of respondent and to carefully measure conflicts and inconsistencies.” (Commissioner’s Decision, slip op. at 22). The Commissioner agreed with the ALJ as to penalty and affirmed Marrero’s removal from his tenured employment with the State-Operated School District of the City of Jersey City. (Commissioner’s Decision, slip op. at 23). The Commissioner stated that removal was appropriate despite Marrero’s previous unblemished record because he had engaged in not one incident, but rather, a pattern of unacceptable behavior. (Commissioner’s Decision, slip op. at 23). Finally, the Commissioner transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Marrero’s certificate. Marrero appealed from the Commissioner’s Decision to the State Board of Education. The State Board of Education affirmed the Commissioner’s decision on March 5, 1977. (State Bd. of Ed. Decision, slip op. at 1).

Thereafter, on January 21, 1999, the State Board of Examiners issued Marrero an Order to Show Cause 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 Respondent by regular and certified mail on February 24, 1999. The Order provided that if respondent desired to file an Answer to the Order that Answer must be filed within twenty (20) days. Marrero filed an Answer on August 16, 1999.¹ In his Answer Marrero stated that he believed he was innocent of the charges presented against him. He claimed that his supposed inappropriate questions were age-appropriate and dealt with a teen-ager's social development and behavior. (Answer, p.1). Marrero said that he had administered similar questions to hundreds of students and had never encountered a similar reaction. (Answer, p. 2). He also denied that he had ever sent the female teacher any messages; rather, he averred that any messages were the creation of a student that had a "romantic creative mind." (Answer, p.3). In the remainder of his Answer, Marrero added that he felt railroaded by the female ALJ who did not take into account his spotless record or the testimony of the witnesses in his behalf. He added that his career had been destroyed by a few individuals "and all are 'females'." (Answer, pp.4-5).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on September 29, 1999, Marrero was sent 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, respondent had 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 whether his offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Marrero did not respond to the hearing notice. Thereafter, on December 23, 1999, Marrero was sent another hearing notice by regular and certified mail. Again, he did not respond.

¹ The lengthy delay between the initial mailing of the Order to Show Cause and Marrero's response was due to the fact that Marrero had moved out of state and the Board of Examiners had trouble securing his new address.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Marrero's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of April 6, 2000, 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 Marrero's offense were in dispute since he admitted asking the student the questions at issue and giving her a note asking if he could call her at home. Moreover, he did not deny that the tenure charges were sustained and led to his dismissal from his tenured employment. Thus, in effect, Marrero has not denied the charges in the Order to Show Cause. Accordingly, his actions constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Marrero'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. 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 Bd. of Educ., 130 N.J.L. 369, 371 (S. Ct. 1943), *aff'd*. 131 N.J.L. 326 (E & A 1944). Teachers in the State of New Jersey "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 Marrero's behavior falls far short of that expected of teaching professionals. As a school psychologist and member of the Child Study Team, his behavior impacts students no less than that of a teacher in the classroom. Accordingly, he must be held to the same high standards.

Furthermore, Marrero's pattern of inappropriate behavior is disturbing to this Board. Not only did he overstep his bounds with a student, he acted inappropriately toward another teacher, his colleague. That misstep is further compounded by Marrero's insistence at the eleventh hour that he did not even send those messages to the other teacher. His contradiction of his hearing testimony as well as his willingness to shift the blame onto a student does not speak well of Marrero's professional judgment.

On the other hand, this Board is not unmindful of Marrero's long unblemished career and the high esteem in which his colleagues held him. While a message needs to be sent that Marrero's conduct is unacceptable, the Board of Examiners does not feel that he should be permanently barred from the teaching profession. Rather, in balancing all of the circumstances of this case, the Board of Examiners believes that the appropriate penalty is a four-year suspension of Marrero's school psychologist certificate.

Accordingly, it is therefore ORDERED that Manuel N. Marrero's School Psychologist certificate be suspended on this 6th day of April 2000 for a period of four years. It is further ORDERED that Marrero 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: September 25, 2000

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

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