

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
NEAL ERCOLANO : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0304-152

At its meeting of December 6, 2001, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Neal Ercolano from his tenured position with the Board of Education of Branchburg for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Neal Ercolano, Docket No. EDU 6138-98 (Decision on Remand, March 13, 2000.) Ercolano currently holds a Teacher of Social Studies certificate issued in April 1971 and a Teacher of Elementary School certificate issued in March 1984.

This case originated in 1997 when the Branchburg Board of Education certified tenure charges against respondent, Neal Ercolano. The district charged him with unbecoming conduct for assaulting a student. The district filed the tenure charges after a municipal court had found Ercolano guilty of the assault. After that ruling, but before filing the tenure charges, the district asked the municipal court to declare that Ercolano had forfeited his position pursuant to N.J.S.A. 2C:51-2. (Initial Decision on Remand, slip op. at 6.) The municipal court judge did not have an opportunity to consider the district's request until after the district had filed tenure charges. Upon learning of the tenure charges, the municipal court judge decided not to rule on the forfeiture and stated that the Commissioner should address that issue. (Initial Decision on Remand, slip op. at 6.)

The Commissioner of Education transmitted the tenure case to the Office of Administrative Law (OAL). In addition, Ercolano asked the OAL to review the district's action in withholding his increment for the 1997-98 school year. The OAL consolidated

the two matters. The Administrative Law Judge (ALJ) concluded that Ercolano had forfeited his position due to his conviction. Moreover, the ALJ upheld the increment withholding. (Initial Decision on Remand, slip op. at 2.) The Commissioner reversed the Initial Decision, ruling that he did not have jurisdiction over the forfeiture issue. He therefore remanded the matter to the OAL to move forward on the tenure charges and Ercolano's challenge regarding his increment withholding.<sup>1</sup> (Initial Decision on Remand, slip op. at 2.) On remand, the ALJ ruled that Ercolano's conviction for simple assault constituted conduct unbecoming a teacher and that he should be dismissed from his tenured position. (Initial Decision on Remand, slip op. at 10.) While the OAL matter was proceeding, the district renewed its application for a ruling on Ercolano's forfeiture before the municipal court. The municipal court judge ruled that Ercolano had indeed forfeited his position by virtue of his assault conviction. (Initial Decision on Remand, slip op. at 7.) Ercolano appealed that decision and after a reversal by the Superior Court, Law Division, the Appellate Division reversed again and ruled that Ercolano indeed had forfeited his tenured position. State v. Ercolano, 335 N.J. Super. 236, 252-253 (App. Div. 2000), certif. denied, 167 N.J. 635 (2001.)

Ercolano also appealed to the Commissioner of Education from the ALJ's decision dismissing him from his tenured position. The Commissioner affirmed Ercolano's dismissal based on conduct unbecoming a teacher. (Commissioner's Decision on Remand, slip op. at 21.) He also transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Ercolano's

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<sup>1</sup> The issue regarding Ercolano's increment withholding is not relevant to this matter and will therefore not be discussed in this decision.

certificates.<sup>2</sup> (Commissioner's Decision on Remand, slip op. at 21.) Ercolano appealed the Commissioner's decision to the State Board of Education. On appeal, the State Board of Education ruled that the Appellate Division's decision that Ercolano had forfeited his position rendered the appeal of his tenure case moot. The State Board of Education therefore dismissed the appeal in the case. (State Board of Ed. Decision, slip op. at 5.)

Thereafter, on December 6, 2001, the State Board of Examiners issued Ercolano an Order to Show Cause as to why his certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing and the fact that Ercolano had forfeited his tenured position by virtue of his assault conviction.

The Board of Examiners sent the Order to Show Cause to Ercolano by regular and certified mail on April 5, 2002. The Order provided that an Answer to the Order must be filed within 20 days. Ercolano filed an Answer on April 22, 2002. In his Answer Ercolano admitted that the district had brought tenure charges against him. He also admitted that the Appellate division had determined that he had forfeited his tenured position effective on the date of his conviction and sentencing for assault in municipal court. (Answer, ¶ 5).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on March 28, 2003, the Board sent Ercolano 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, Ercolano was

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<sup>2</sup> On January 20, 2004, the State Board of Education adopted a new administrative code governing professional licensure and standards. N.J.A.C. 6A:9-1 et seq. Although this decision was mailed after the effective date of the new code, the Board of Examiners' decision in this case predates the effective date of the new code and was therefore decided under the old code. All citations in this decision therefore are to the prior administrative code.

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 certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. The regular mail copy of the notice was not returned and the certified mail copy was returned as unclaimed. Ercolano did not respond to the hearing notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Ercolano's assault conviction and forfeiture constitute conduct unbecoming a certificate holder. At its meeting of October 30, 2003, the State Board of Examiners reviewed the charges and papers Ercolano filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Ercolano's offense were in dispute since he admitted to his conviction. Thus, Ercolano has not denied the charges in the Order to Show Cause. Accordingly, his actions against the student constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Ercolano's offense as set forth in the Order to Show Cause, represents just cause to act against his certificates 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 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. There can be no dispute that Ercolano's assault conviction negates any claim he can have to being a role model for children. Moreover, the forfeiture of his tenured position through court order speaks volumes about the appropriateness of having him remain in any classroom. Thus, the only proper response to Ercolano's breach is revocation.

Accordingly, it is therefore ORDERED that Neal Ercolano's Teacher of Social Studies and Teacher of Elementary School certificates be revoked on this 30th day of October 2003. It is further ORDERED that Ercolano return his certificates to the Secretary of the State Board of Examiners, Office of Licensing, PO Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

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Michael K. Klavon, Secretary  
State Board of Examiners

Date of Mailing: November 5, 2004

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