

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
ANTHONY COLUCCIO, JR. : ORDER OF REVOCATION
_____ : DOCKET NO: 1112-162

At its meeting of January 19, 2012, the State Board of Examiners (Board) reviewed a decision forwarded by the Acting Commissioner of Education that had dismissed Anthony Coluccio, Jr. from his tenured teacher of cosmetology position at the Edna Mahan Correctional Facility for Women (EMCFW) for charges of unbecoming conduct stemming from his improper and unauthorized relationship with an inmate. *In the Matter of the Tenure Hearing of Anthony Coluccio, Jr.*, Docket No. 158-7/09 (Acting Commissioner’s Decision, July 5, 2011). Coluccio currently holds a Teacher of Production, Personal or Service Occupation: Cosmetologist/Hairstylist certificate, issued in October 1996.

This case originated when the Department of Corrections (Corrections) certified tenure charges of conduct unbecoming a public employee against Coluccio. After the case was transmitted to the Office of Administrative Law (OAL) for hearing, Administrative Law Judge (ALJ) Patricia Kerins issued an Initial Decision finding that Corrections had proven that Coluccio had engaged in conduct unbecoming by engaging in an inappropriate and unauthorized, albeit consensual, relationship with an adult inmate. *In the Matter of the Tenure Hearing of Anthony Coluccio, Jr.*, OAL Docket No. EDU 60-10 (Initial Decision, May 19, 2011). ALJ Kerins further found that Coluccio’s “sexually explicit communications and his furtive gropings of [the inmate] rose to the level of sexual harassment. While not unwanted, those attentions were given to an inmate, someone to whom he was superior in position.” *Id.* at 13.

In assessing the appropriate penalty, ALJ Kerins found that, although Coluccio’s conduct was serious, “his prior disciplinary history is a factor in his favor.” *Ibid.* Furthermore, the ALJ

noted that the relationship was with an adult and consensual, that it was finite in time, that Coluccio took steps to end it and that Coluccio worked in a minimum security area and his duties were not related to the safety of the facility. *Id.* at 13-14. In view of those factors, ALJ Kerins determined that a one year suspension without pay was an appropriate penalty. *Id.* at 14.

In a decision dated July 5, 2011, the Acting Commissioner of Education (Commissioner) concurred with the ALJ that Corrections had established that Coluccio was guilty of unbecoming conduct. (Acting Commissioner's Decision, slip op. at 1). However, the Commissioner disagreed with the ALJ's imposition of a one-year suspension, instead noting that Coluccio's behavior was not the result of an isolated incident, "but rather a pattern of conduct that occurred between October 2008 and May 2009, which involved multiple discussions with sexual overtones and inappropriate touching of the inmate initiated by respondent." *Id.* at 2. Although the Commissioner recognized that the relationship "was technically consensual in nature," he also noted that, as a teacher in a correctional facility, Coluccio "inherently had a degree of power over the inmate which further exacerbates the gravity of his conduct." *Ibid.* Those concerns, coupled with the determination that Coluccio initially denied and then minimized the extent of his behavior, led the Commissioner to conclude "that the nature of the incidents proven to have occurred demonstrate that [Coluccio] is unfit to remain in his position." *Id.* at 3. Accordingly, the Commissioner ordered Coluccio's removal from his tenured teaching position in Corrections. *Ibid.* The matter was then transmitted to the Board for appropriate action regarding Coluccio's certificate.

Thereafter, on March 1, 2012, the Board issued Coluccio an Order to Show Cause as to why his certificate should not be revoked. The Order was predicated on the charges of conduct unbecoming that had been proven in the tenure hearing.

After securing a correct address for Coluccio, the Board sent him the Order to Show Cause by regular and certified mail on March 20, 2012. The Order provided that Coluccio's Answer was due within 30 days. On April 19, 2012 Coluccio submitted a letter requesting that his certification case be held in abeyance pending the appeal of his tenure case. On May 4, 2012, the Board granted his request and placed his certification case in abeyance. In a decision issued August 6, 2012, the Superior Court of New Jersey, Appellate Division, affirmed Coluccio's dismissal from his tenured position. *In the Matter of the Tenure Hearing of Anthony Coluccio, Jr.*, Dkt. No. A-0772-11T2 (App. Div. August 6, 2012) (Unpublished Opinion). The proceedings before the Board were then taken out of abeyance and another copy of the Order to Show Cause was sent to Coluccio. Neither the certified mail copy nor the regular mail copy was returned. Thereafter, on September 25, 2012, the Board sent Coluccio another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. The certified mail receipt was signed and returned and the regular mail copy was not returned. Coluccio did not file a response.

Thereafter, pursuant to *N.J.A.C.* 6A:9-17.7(e), on October 22, 2012, the Board sent Coluccio a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Coluccio 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 as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificate. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Coluccio's offense warranted action against his certificate. Thereupon, the Board would also determine the appropriate sanction, if any.

Coluccio was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. The certified mail receipt was signed and returned and the regular mail copy was not returned. Coluccio did not file a response.

The threshold issue before the Board in this matter, therefore, is whether Coluccio's conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. Since Coluccio failed to respond to the Order to Show Cause or the hearing notice, at its meeting of January 25, 2013, the Board considered only the allegations in the Order to Show Cause. The Board determined that no material facts related to Coluccio's offense were in dispute since he did not deny that he had lost his tenured position as a result of the tenure proceedings brought against him. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9-17.7(h)*. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The Board must now determine whether Coluccio's conduct 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 Board 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*. "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. As the ALJ noted and the Commissioner agreed, Corrections sustained its charges of unbecoming conduct against Coluccio. The record amply demonstrated that Coluccio engaged in an inappropriate, albeit consensual, relationship with an adult inmate at

the Corrections facility where Coluccio was employed. This relationship included sexually explicit notes and sexual touching. Moreover, Coluccio sought to deflect responsibility for his actions and paint himself as the victim of a zealous inmate with an overactive imagination. The Board agrees with the Commissioner's assessment that Coluccio's conduct, in its totality, proves his unfitness to continue to be a teacher and would extend this finding to apply to any public school in New Jersey. The Board therefore determines that the appropriate response to Coluccio's unbecoming conduct is the revocation of his certificate.

Accordingly, on January 25, 2013, the Board voted to revoke Anthony Coluccio's Teacher of Production, Personal or Service Occupation: Cosmetologist/Hairstylist certificate. On this 28th day of February 2013 the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of Coluccio's certificate be effective immediately. It is further ORDERED that Coluccio return his certificate to the Secretary of the State Board of Examiners, Office of Licensure, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

Date of Mailing:

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-38.4.