

EDE #11443-03
SBE # 776-06/03
SB # 26-06

IN THE MATTER OF THE REVOCATION OF :
THE TEACHING CERTIFICATE OF ERNIE : STATE BOARD OF EDUCATION
CHAVEZ BY THE STATE BOARD OF : DECISION
EXAMINERS. :

Decision by the State Board of Examiners issued on May 15, 2006

For the Respondent-Appellant, Law Offices of Alan L. Zegas (Mary
Frances Palisano, Esq., of Counsel)

For the Petitioner-Respondent State Board of Examiners, Steven Todd
Gold, Deputy Attorney General (Stuart Rabner, Attorney General of
New Jersey)

The Phillipsburg Board of Education certified tenure charges of unbecoming conduct against Ernie Chavez (hereinafter “appellant”), an industrial arts teacher. A settlement agreement, in which the appellant agreed to resign from his tenured teaching position, was approved on March 14, 2003 by the Commissioner, who referred the matter to the State Board of Examiners for possible action against the appellant’s certificate. On July 30, 2003, the Board of Examiners issued an Order to the appellant to show cause why his certification as a teacher of industrial arts should not be suspended or revoked. The Show Cause Order related that the appellant had been accused in the tenure charges of “engaging in inappropriate horseplay with a female student, inappropriately touching female students, and making inappropriate comments to his students.”

The Board of Examiners transmitted the matter to the Office of Administrative Law as a contested case. After a hearing, an administrative law judge (“ALJ”), stressing that the outcome of the case rested largely on a credibility determination of the witnesses and documentary evidence, concluded that the appellant had engaged in unbecoming conduct with regard to his actions involving two female students, S.S. and B.V. The ALJ found that the appellant had made the following inappropriate comments to S.S.: “You can sleep at my house if you like...I’m not saying that you will get much sleep,” and “I’m not gonna bite, unless you want me to.” The ALJ found the testimony of S.S. to be “compelling and convincing,” and he found “it completely inconceivable that the incidents as described by S.S. were either contrived or simply did not happen.” Initial Decision, slip op. at 25. The ALJ found that S.S. was “articulate and intelligent and did not embellish her factual representations but related them in a manner which enhanced her credibility.” Ibid.

The ALJ found, in addition, that the appellant had engaged in inappropriate behavior with B.V., a 13-year-old student. As found by the ALJ, the appellant had “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.” Ibid. Although the ALJ found that the touching between the appellant 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.” Id. at 26. The ALJ determined that even if he accepted the appellant’s recitation of the incident involving B.V. as factually accurate, the appellant had “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.” Ibid. The ALJ concluded that revocation of the appellant’s certification was warranted.

In a decision mailed on May 15, 2006, the State Board of Examiners adopted the ALJ’s findings and conclusions and directed that the appellant’s certificate be revoked effective May 4, 2006.

The appellant filed the instant appeal to the State Board of Education.

After a thorough review of the record, including the transcripts of the hearing held in the Office of Administrative Law, we modify the penalty imposed by the Board of Examiners. While we agree that unbecoming conduct has been demonstrated, we conclude that revocation of the appellant’s certification is too harsh a penalty under the facts of this case. Rather, we conclude that a two-year suspension of his teaching certificate is warranted.

Review of the record reveals that S.S. testified that she had fallen asleep in class and that the appellant had woken her after class was over. She related that when she told the appellant that it was hard to sleep in her house because of the size of her family: “[the appellant] said, ‘Well, you can stay at my house if you’d like,’ and I, you know, with a smile wasn’t – nothing nasty and nothing like that, he just said, you can stay at my house if you want, just right out there in the open, which made me feel very uncomfortable considering that was a teacher and he said, ‘I’m not saying you’d get much sleep,’ and I grabbed my stuff and I quickly went to the next class.” Tr. 2/15/05, at 8. S.S. testified that on another occasion, after she had shifted away from the appellant when she felt that he was too close to her, “he said, ‘I’m not gonna bite,’ and I – then I just like kind of, you know, sat there and he said, ‘Unless you want me to,’...” Id. at 13.

The appellant denied making any of those comments. As previously stated, the ALJ found the testimony of S.S. with regard to those comments to be “compelling and convincing,” and we find no basis in the record for disturbing the ALJ’s credibility finding. See N.J.S.A. 52:14B-10.

With regard to the incident involving B.V., student B.C. testified that the appellant had touched B.V. on her chest and lower back. The ALJ found that “B.C.’s actual recollection of what occurred on November 1, 2000 was not sharp enough for him to give accurate testimony.” Initial Decision, slip op. at 5. Another student P.C., when asked at hearing if he remembered the details of that incident, responded: “Vaguely, I remember things about ice being put on her shirt and just like inappropriate touching. That’s all.” The ALJ found that P.C.’s recollection of the incident “was hazy at best and of questionable authenticity.” Id. at 8. She added that “[t]he sum total of the testimony offered by both P.C. and B.C. was that there was an incident between Mr. Chavez and B.V. on the date in question and there was some physical contact between the two.” Ibid.

Student J.C. testified that B.V. “put ice down [the appellant’s] shirt and then they just started going back and forth, kind of like they were playing tag.” Tr. 2/15/05, at 42. When asked by the Court what specifically she had seen, J.C. responded that “I can’t explain it. Like they were going back and forth like playing around, like touching and like – I can’t explain it.” Id. at 43. She testified that the appellant had touched B.V.’s “chest and her butt,” ibid., explaining, “[t]hey were just going back and forth like – I don’t know how to explain it. I don’t know if his hand just slipped or if it was -- .” Id. at 52. She acknowledged that she “would describe the touch of the butt more of like a brush,

like a slip,” id. at 53, and that she had described the incident as “more just like horseplay than fooling around,” ibid. She also acknowledged that this was the first time she had seen the appellant “horsing around or playing around in class.” Id. at 54. Finding that “J.C.’s version of the incident was significantly more detailed than those that preceded her,” the ALJ observed that “the importance of her testimony was that it confirmed the incident itself, the involvement of the ice and the contact between Mr. Chavez and B.V.” Initial Decision, slip op. at 15.

B.V. did not testify at the hearing, but the ALJ admitted into evidence transcribed statements she had given on November 3, 2000, Exhibit P-2, in evidence, and August 21, 2001, Exhibit P-1, in evidence. Although B.V. was consistent in her assertion that the appellant had dropped a piece of ice on her, there are inconsistencies in her statements with regard to the details surrounding that incident. In her November 3, 2000 statement, the appellant claimed that after the appellant had dropped the ice on her: “And I’m like okay, that’s enough of the ice. I picked it up. I stood up like this in my chair, grabbed the ice out, and threw it in the garbage. I said that’s enough with the ice. I said that’s it, it’s over with. He’s like okay, whatever.” Exhibit P-2, in evidence, at 4. However, in her August 21, 2001 statement, B.V. claimed that after the appellant had dropped the ice on her, she had “picked up pieces of the ice and threw it at Mr. Chavez. I was laughing and Mr. Chavez was laughing. I sat back down at the computer. Mr. Chavez then threw some ice at me.” Exhibit P-1, in evidence, at 1.

Despite such inconsistencies, the “questionable authenticity” of the testimony of P.C. and B.C., and the lack of detail provided by J.C.’s testimony, even the appellant

acknowledged that he had dropped a piece of ice on B.V. “where her shoulder and her shirt was” as a “prank” after she had put it down the back of his shirt. Tr. 2/17/05, at 34-35, 73. The appellant denied touching B.V. in any way except to block her with his arms when she subsequently came towards him in such a manner as to try to put the ice back on him. Id. at 35-36, 68, 75, 78. He indicated that B.V. continued to follow him and that he walked quickly to get away from her, at which point she tossed a couple pieces of ice at him. Id. at 36, 72-81. It is evident, even from the appellant’s own testimony, that he did not take appropriate steps to control the classroom and put an end to the incident. Indeed, the appellant’s behavior in perpetuating the “prank” by putting the ice on B.V.’s shoulder after she had put it down his shirt had the foreseeable effect of escalating the episode.

However, while we agree that unbecoming conduct has been demonstrated with regard to the two comments made by the appellant to S.S. and the incident involving B.V., we conclude that the circumstances as proven do not warrant revocation of the appellant’s certification so as to preclude him from ever serving as a teacher in any district in the State. We add in that regard that the appellant had served as a teacher in the district for 14 years, and there is no record of any previous disciplinary problems. After careful consideration of the specific conduct demonstrated on the record before us, we conclude that a two-year suspension of the appellant’s certificate is the appropriate penalty. See, e.g., In the Matter of the Suspension of the Teaching Certificates of Anthony Mangan, decided by the State Board of Education, December 6, 2006 (teacher’s certification suspended for two years as a result of inappropriate conduct, including flirting with and touching female students, and inappropriate remarks

to students); In the Matter of the Suspension of the Certificates of Corey Younger, decided by the State Board of Education, January 4, 2006, appeal pending, App. Div. (teaching staff member's certification suspended for two years for allowing female students to remain in his hotel room for a substantial period of time during the Penn Relays while he was an assistant track coach).

In so doing, we find that the circumstances demonstrated herein are distinguishable from the situation in In the Matter of the Certificates of Wayne Slaughter, decided by the State Board of Examiners, September 25, 2003, which is cited by the Deputy Attorney General representing the Board of Examiners in support of revocation. Unlike the scenario in the instant matter, the respondent in Slaughter had repeatedly engaged in sexual harassment of female students and had previously been warned about such behavior. As found by the ALJ in that case, the respondent had "engaged in a pattern and practice of making inappropriate comments of a sexual nature to pupils under his supervision and control." Slaughter, supra, slip op. at 2 (emphasis added). The ALJ found that the respondent's words, actions and conduct in that case were so severe and pervasive as to create and maintain a sexually offensive and hostile school environment, even causing one student to fear going to school.

Similarly, School District of the Township of Parsippany-Troy Hills, Morris County v. Hess, decided by the State Board of Examiners, 97 N.J.A.R.2d (EDU) 34, cited by the Deputy Attorney General, concerned a teacher who had been implicated in a series of incidents involving inappropriate comments and behavior towards female students, including a poem he gave to a student expressing his feelings towards her and inquiring whether she had similar feelings, and who had previously been reprimanded after he

kissed a female student on the lips. See also In the Matter of the Revocation of the Teaching Certificates of Michael Nieves, decided by the State Board of Education, December 6, 2006, appeal pending, App. Div. (teacher's certification revoked where he had sent suggestive notes to an eighth-grade female student, including a note seeking to "hang out" with her during a school holiday when he said they could get together without anyone knowing about it); In the Matter of the Revocation of the Teaching Certificate of Stephen Fox, decided by the State Board of Education, May 3, 2006, appeal pending, App. Div. (teacher's certification revoked where he had kissed on the lips a male student, who was struggling with his sexual orientation and being subjected to sexual abuse, after he had come to the respondent for guidance); In the Matter of the Revocation of the Certificates of Laurie Rosen, decided by the State Board of Education, May 3, 2006, appeal pending, App. Div. (teacher's certification revoked where she had hit and kicked a 10-year-old special education student); In the Matter of the Revocation of the Teaching Certificates of Terry Stocker, decided by the State Board of Education, September 1, 2004 (teacher's certification revoked where he had wrapped a special education student in duct tape and instructed two female students to drag him down a school hallway by his legs while another student videotaped it); In the Matter of the Revocation of the Teaching Certificates of Frank Roberts, decided by the State Board of Education, August 5, 1998 (teacher's certification revoked where he had engaged in explicit sexual discussions, including details of his sex life, with female students).

Accordingly, we modify the penalty imposed by the State Board of Examiners and direct that the appellant's certification be suspended for two years commencing on

May 4, 2006, the effective date of the Board of Examiners' decision revoking his certificate.

Kathleen Dietz opposed.

Edithe Fulton abstained.

Attorney exceptions are noted.

April 4, 2007

Date of mailing _____