

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RHODE ISLAND DEPARTMENT OF  
ELEMENTARY AND SECONDARY  
EDUCATION

V.

MARIO J. SILVA

DECISION

Held: The petitioner is presently shown  
to be unfit to be certified as a  
student teacher.

Date: May 17, 1995

### Travel of the Case

On May 4, 1994, Mario J. Silva applied to the Rhode Island Department of Elementary and Secondary Education to be certified as a student teacher. Mr. Silva disclosed on his application that he had a prior criminal conviction (Department Ex. A). The Department subsequently notified Mr. Silva that his application for a student teaching certificate was not approved, and that a recommendation would be made to the Commissioner to deny his application. Mr. Silva, through his attorney, requested a hearing and on October 18, 1994 the matter was heard by the undersigned, upon designation by Commissioner Peter McWalters.

The record in this case closed, upon filing of the transcript with the Department on December 16, 1994.

### Issue

Is the applicant qualified to hold a student teaching certificate in spite of his prior criminal conduct and record of conviction?

### Findings of Relevant Facts

- Mario J. Silva is presently twenty four years old and enrolled as a student at the University of Rhode Island. He seeks to undertake a student teaching assignment in a school district in Rhode Island. Dept. Ex. A.
- On November 5, 1991 Mr. Silva was convicted in the Bristol County Superior Court of the Commonwealth of Massachusetts of the crime of rape. He was sentenced to four to six years imprisonment, one year to be served, the balance suspended. Dept. Ex. D<sup>1</sup>.
- On April 3, 1991 Mr. Silva admitted that he had aided and abetted another man in that man's first degree sexual assault of a young woman in Pawtucket, Rhode

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<sup>1</sup> Although the documentation received from the clerk's office in Massachusetts indicates a conviction for "aggravated rape", counsel stipulated that this document was in error and the actual conviction was for the crime of rape. See transcript pp. 6-9.

Island on August 5, 1989. Mr. Silva also admitted that he had committed a second-degree sexual assault on the same young woman. Dept. Ex. C.

- At the time of the commission of the offenses in question Mario Silva was eighteen years old. Tr. p. 58, Dept. Ex. E.
- Since his release from prison (July 1992), Mr. Silva has not been involved in any criminal charges of any kind. Tr. p. 54.

### Positions of the Parties

#### Petitioner Mario J. Silva

Other than Mr. Silva's record of conviction, there is no justification for denying him permission to student teach in the state of Rhode Island. With respect to that conviction, Mr. Silva has paid his debt to society, his attorney argues. Subsequent to his release from prison, the petitioner successfully completed his coursework at the University of Rhode Island, a clear indication that he has rehabilitated himself.

Counsel for the petitioner stressed that at the time of the offenses, Mr. Silva was eighteen (18) years old. Had he not turned eighteen just prior to committing these offenses, his record would be clear and there would be no impediment to his eligibility to obtain his student teacher's certificate.

Despite testimony presented by the Department to the contrary, the petitioner asserts that he would be a good role model for students, since students would be dealing with him without any awareness of his criminal record.

#### Department of Elementary and Secondary Education

Given the petitioner's criminal history, the Department asserts that he presently lacks the type of background to be a teacher. Although the Department recognizes that by completing the coursework for his degree at the University, and in staying out of any further trouble with the law Mr. Silva has made a "good start", counsel argues that given the seriousness of the criminal conduct here, Mr.

Silva still is not qualified to become a student teacher. The Department implicitly argues that it has carried its burden of proof that Mr. Silva is presently unfit to teach.

### Decision

The Department has placed on the record evidence of Mr. Silva's involvement in three acts of criminal misconduct -- aiding and abetting in a first-degree sexual assault, commission of a second-degree sexual assault and rape. All three acts of misconduct constitute serious felonies in both jurisdictions involved, Rhode Island and Massachusetts.

Separate and apart from this proven misconduct, Mr. Silva stands convicted of the crime of rape, a conviction which followed a jury trial conducted in the Commonwealth of Massachusetts.

Under Rhode Island law, evidence of conduct which is criminal in nature or a record of criminal conviction does not act as an automatic disqualification to entry into the teaching profession or retention of the teaching certificate<sup>2</sup>. Our law, R.I.G.L. 16-11-4 and related regulations require that the Commissioner of Elementary and Secondary Education make a determination of whether there is "cause" for the annulment (or refusal to issue) a teaching certificate.

The thrust of case-by-case inquiries in hearings under Section 16-11-4 is whether the individual is fit to teach. A hearing officer is charged to review all of the facts contained in the record, not just the record of criminal conviction, and make a careful and reasoned inquiry into the teacher's fitness. See West Valley-Mission College v. Concepcion, 21 Cal Rpt. 2d 5 (Cal App. 6 Dist 1993).

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<sup>2</sup> Unlike school bus drivers in Rhode Island who are automatically rendered ineligible to hold a license by virtue of a felony conviction. Such a conviction creates an irrebuttable presumption that all ex-felons are unfit to serve as school bus drivers because of the disqualification created by Department of Transportation regulation. See Hill v. Gill, 703 F.Supp. 1034 (D.R.I.) 1989)

In this case, the petitioner's commission of acts of criminal misconduct, and his record of felony conviction: to wit the crime of rape, present a prima facie case of unfitness. Even considering his young age at the time and the fact that these offenses occurred almost six (6) years ago, the seriousness of the conduct, the absence of any mitigating circumstances shift to the petitioner a burden of presenting testimony and documentation of his present fitness to teach.

In relating the petitioner's misconduct and his conviction record to his fitness, we conclude that there is a nexus with his potential employment in a school setting. First, we are concerned about the potential risk of harm to students and staff if such conduct were to be repeated. We know nothing about what might have caused the petitioner to commit the sexual assaults in question. His testimony that "... what happened, in my opinion, I did not commit a crime" is of particular concern, given that it very well may indicate that now even after the wrenching experience of his imprisonment, Mr. Silva either doesn't recognize that what he did was wrong or doesn't believe that non-consensual sexual acts should be punished under our criminal statutes. In either case there is no testimony from Mr. Silva himself that would demonstrate his understanding of the wrongfulness of what he did. This being the case, there is still the possibility of risk of harm to students and staff in a school setting. Given the conduct he engaged in, even though it was almost six years ago, we believe the burden shifted to Mr. Silva to demonstrate that there is little likelihood of recurrence of the conduct in question.

Nor do we have the benefit of expert testimony that Mr. Silva is not likely to engage in such conduct again. See Garcia v. State Board of Education, 102 N.M. 306, 694 P2d 1371, in which a teacher was recertified, even though he had previously been convicted of criminal sexual contact with a child under age thirteen. In Garcia the applicant presented the expert testimony of a psychologist that he had been rehabilitated.

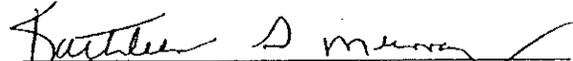
Numerous cases have held that in order to be fit to teach, an individual must have good moral character to communicate sound values to students and to function as a role model, or exemplar, for students<sup>3</sup>. Again, based on the record before us, the Department has demonstrated that Mr. Silva lacks the requisite good character. A prima facie case of his lack of good character is presented by the evidence that he has violated two state's criminal codes. Despite his opportunity to present evidence of his present moral character, reputation and standing in the community, i.e. that he had been rehabilitated<sup>4</sup> Mr. Silva presented not even one witness on his behalf. Although his counsel, in closing argument, noted the absence of such witnesses he argued "no one needs to speak for (Mr. Silva) except himself". On the contrary, in the face of such damaging character evidence, i.e. a felony conviction and an admission of two other crimes in Superior Court, it was incumbent upon Mr. Silva to rebut such evidence by clear and convincing evidence of his present good character. He presented no evidence, other than his own opinion, to rebut the persuasive case made by the Department of Education.

Based on the record presented at the hearing of October 18, 1994, the Department has demonstrated, by clear and convincing evidence, that Mr. Silva is not presently fit to hold a student teaching certificate. Certainly, our ruling does not preclude Mario Silva from requesting a teaching certificate at some future point should he feel that the record presented would be substantially different.

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<sup>3</sup> See Pettit v. State Board of Education, 10 Cal 3d 29, 109 Cal Rptr 665, 513 P2d 889; Ambach v. Norwick, 441 US 68, 99 S.Ct. 1589; 60 L.Ed. 2d 49 (1979).

<sup>4</sup> We do not presume rehabilitation simply by the petitioner's successful completion of his prison term and continuance on probation without violation.

  
Kathleen S. Murray, Hearing Officer

Approved:

  
Peter McWalters, Commissioner

May 17, 1995  
Date