

# Sentencing delayed at 11th hour in teacher sex case

## Surprise letter from student raises issues that could help clear accused

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A sentencing of a former Kittatinny Regional High School teacher who pleaded guilty to having sexual relations with a 15-year-old student was postponed yesterday, after the girl unexpectedly submitted a last-minute letter that may help clear the teacher, his attorney said.

The 11th-hour development arose when, as defendant James Cunneely was awaiting his turn to be sentenced in Superior Court in Newton, the girl's mother handed in a letter from her daughter containing "the victim's position on sentencing," said Sussex County

Assistant Prosecutor Francis Koch. He immediately alerted Judge N. Peter Conforti, who then shared the letter with defense attorney James Porfido.

The letter's contents were not disclosed, but Porfido said it reflects that the girl, now 16, has been a "reluctant witness" for the prosecution from the start.

The missive "raised issues about the whole case, the core of the indictment and whether the state has enough evidence to go forward and support the allegations. It raised a red flag," Porfido said.

Conforti delayed the sentencing to April 10, so Cunneely could have

time to decide whether to stick with his guilty plea and face a possible three-year prison sentence, or withdraw the plea and take the case to trial.

Koch, who declined further comment, did not object to postponing the sentencing or to Cunneely being released from the county jail on \$75,000 bail expected to now be posted by his family members.

Cunneely, 31, of Hardyston, was arrested Feb. 5, 2007 after a five-month relationship with the girl, authorities have said. When questioned by police, Cunneely, a married father of three young children, admitted having 15 to 20 sexual

trysts with the girl at several motels, in his car, in her bedroom, and even in her mother's bedroom, according to an arrest affidavit.

Cunneely initially was charged with first-degree sexual assault. However, in a plea bargain on Dec. 11, he pleaded guilty to a lesser second-degree charge and, in exchange, the prosecution was to recommend that he be sentenced as if the crime were an even-lesser third-degree violation punishable by three years in state prison, instead of 10 to 20 years.

Cunneely surrendered on Jan. 2 to begin serving the expected sentence in the county jail as soon as possible. If sentenced to three

years in prison, he likely would become eligible for parole after about 9 months of incarceration. As of yesterday, he has served 97 days in jail and would receive credit for that time under a prison sentence.

While the girl's letter seems favorable to Cunneely, taking the case to trial could be risky because a conviction by a jury could result in a 20-year term in prison, Porfido said.

He added that a 15-year-old cannot legally consent to a sexual relationship with a 30-year-old adult. But the letter raises ques-



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tions of whether "a higher level of scrutiny" is required by the defense of the state's evidence and witness statements, Porfido said.

On Feb. 29, the girl and her mother filed a federal lawsuit against Cunneely and the school alleging her civil rights were violated and the school was negligent. Jeffrey Patti, attorney for the mother and her daughter, said he was not aware of the girl's letter in the criminal case, but believes it will not affect the civil lawsuit, because civil court is a different forum with a lower burden of proof than criminal court.

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