

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
DEAN HOWARTH : ORDER OF REVOCATION
_____ : DOCKET NO: 0607-156

At its meeting of January 18, 2007, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had settled a tenure case brought against Dean Howarth by the Maple Shade Board of Education (Maple Shade) for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Dean Howarth*, Docket No. EDU 08830-05 (Commissioner's Decision, July 10, 2006). Howarth currently holds a Teacher of Social Studies certificate, issued in March 1987, and a Teacher of the Handicapped certificate, issued in December 1994.

This case originated in September 2005, when the Maple Shade Board of Education certified tenure charges against Howarth. The district charged him with conduct unbecoming a teaching staff member for using a school computer visible to students to send and receive sexually explicit and racist e-mails during his instructional time, sending negative e-mails concerning the district and its students and visiting a strip club during lunchtime of an in-service day and returning to school late with the smell of alcohol on his breath.

The Acting Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). After the hearing had begun, the parties settled the matter. Howarth resigned from his tenured position and the district paid him back salary and benefits. The Acting Commissioner approved the settlement and transmitted the matter to the Board of Examiners for appropriate action. Commissioner's Decision, slip op. at 1.

Thereafter, on February 22, 2007, the State Board of Examiners issued Howarth 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 alleged in the tenure hearing.

The Board sent Howarth the Order to Show Cause by regular and certified mail on March 5, 2007. The Order provided that Howarth's Answer was due within 30 days. Howarth filed an Answer on April 3, 2007. In his Answer, Howarth admitted that the district had brought tenure charges against him but denied that the allegations warranted the suspension or revocation of his certificates. (Answer, ¶¶ 4, 6.)

Thereafter, on June 8, 2007, the Board transmitted the matter to the Office of Administrative Law (OAL) as a contested case. A hearing was conducted before Administrative Law Judge (ALJ) Joseph Martone on several dates in May, July and December 2008, and in January 2009. After the record closed, ALJ Martone issued his Initial Decision on July 20, 2009. *In the Matter of the Certificates of Howarth*, Dkt. No. EDE 4479-07 (Initial Decision, July 20, 2009). In that decision, ALJ Martone concluded that Howarth had engaged in the conduct alleged in the Order to Show Cause "by sending, receiving, forwarding saving and otherwise viewing and reviewing the exhibits stipulated to be found on his computer." *Id.* at 27. The ALJ found that "virtually all of the exhibits" submitted into evidence by stipulation of the parties violated Maple Shade's policy on "Acceptable Use of the Information network." *Id.* at 28. Moreover, the ALJ noted that many of the exhibits contained nudity and at least three were pornographic in nature. *Id.* at 28. The ALJ also found that "Howarth acknowledged and admitted to attending a Go-Go bar during work hours in 2003." *Id.* at 27. ALJ Martone determined that Howarth's actions and conduct in the case clearly amounted to unbecoming conduct: "His conduct and actions were a flagrant misuse of district resources and showed a lack

of judgment and a failure to comply with the heavy duty of self-restraint and controlled behavior imposed on a teacher.” *Id.* at 29. Howarth’s conduct in “saving, accessing and forwarding” the pornographic exhibits was particularly “reprehensible” according to the ALJ and “violate[d] a sacred trust with his students.” *Ibid.*

In considering the appropriate penalty in the case, ALJ Martone noted that Howarth “assert[ed] a number of mitigating factors.” *Id.* at 29. The ALJ gave little weight, however, to Howarth’s settlement agreement in his tenure case as it was not binding on the Board of Examiners. *Id.* at 29-20. Similarly, Howarth’s argument that other staff members in Maple Shade were also misusing district computers was given short shrift by the ALJ as that excuse could not justify or mitigate Howarth’s conduct. *Id.* at 30. ALJ Martone did note Howarth’s record as a dedicated and effective teacher, but added that his “prior excellent record and his subsequent realization of the error of his ways does not mitigate the extraordinary lack of judgment he has shown in this case.” *Ibid.* Accordingly, the ALJ concluded that the only appropriate penalty was the revocation of Howarth’s teaching certificates. *Ibid.*

Howarth submitted Exceptions and the Deputy Attorney General (DAG) representing the Board of Examiners submitted Reply Exceptions. In his Exceptions, Howarth admitted that he had inappropriate e-mails on his school computer but argued that no evidence was produced to show when he opened and reviewed the e-mails that he received. (Exceptions, pp. 9-11.) Howarth also argued that the District’s policy on acceptable personal use of district computers was unclear and that Maple Shade allowed teachers to use their school computers for personal use during the same time period he had received, stored or sent e-mails from his district computer. (Exceptions, pp. 11-16.) Howarth contended that he never accessed pornographic sites using the internet, but rather, was accused only of sending and receiving explicit e-mails.

(Exceptions, pp. 21-22.) He maintained that most of the e-mails sent to him were by persons over whom he had no control. (Exceptions, p. 22.) He also argued that there was no proof that his job performance was diminished in any way or that any student saw or was harmed by the e-mails. (Exceptions, pp. 22-23.) Howarth also claimed that the ALJ erred when he gave little weight to Howarth's mitigation evidence, especially the settlement agreement from his tenure case wherein the District "was essentially agreeing that Mr. Howarth was still qualified to teach in the public schools of New Jersey." (Exceptions, p. 26.). Howarth reiterated his claims that other District staff members had sent and received inappropriate e-mails and that he was an outstanding teacher whose computer use "neither affected his instruction of his students nor contributed to any deficiency in his teaching performance." (Exceptions, pp. 28-30; 30.)

In her reply, the DAG argued that the "Initial Decision, and the factual findings and legal conclusions contained therein, are amply supported by the evidence presented at hearing." (Reply Exceptions, p. 1.) She noted that ALJ Martone had found that Howarth had sent, received, forwarded and saved the inappropriate exhibits found on his school computer, that he had attended a Go-Go bar during school hours, and that at least several of the exhibits were pornographic in nature. (Reply Exceptions, pp. 1-2.) The DAG further claimed that ALJ Martone's legal conclusion that Howarth engaged in conduct unbecoming a teaching staff member was correct. (Reply Exceptions, pp. 3-6.) She noted that Howarth's behavior was particularly egregious, because his e-mails were sent regularly over several years and during periods when Howarth was supposed to be engaged in classroom instruction, and because some of his e-mails contained highly inappropriate commentary regarding female students at Maple Shade. (Reply Exceptions, pp. 6-7.) She further argued that a settlement agreement in a tenure proceeding is not controlling in a revocation case and that ALJ Martone was therefore correct in

according it “little, if any, weight.” (Reply Exceptions, pp. 8-9.) Finally, the DAG argued that Howarth’s claims that it was impossible to tell when and for how long he viewed the offensive e-mails, and that no students viewed any of the e-mails, were distractions from the real issue of his unbecoming conduct. (Exceptions, pp. 9-12.) Accordingly, the DAG noted that “Howarth’s exceptions do nothing to undermine the integrity of the Initial Decision,” and urged the Board of Examiners to adopt it as the “Final Decision in this matter.” (Reply Exceptions, p. 13.)

The Board must now determine whether to adopt, modify or dismiss the Initial Decision in this matter. At its meeting of October 22, 2009, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision, Exceptions and Reply Exceptions and the issues raised therein, the Board voted to adopt the Initial Decision.

As a preliminary matter, the Board must address Howarth’s claim that the settlement agreement in his tenure case should carry more weight in this proceeding than that accorded to it by ALJ Martone. That argument is unfounded. As the DAG correctly noted in her Reply Exceptions, neither the presiding ALJ’s nor the Commissioner’s approval of a settlement in a tenure case necessarily signifies agreement with the substance of the provisions, but rather an acknowledgment that the agreement comports with the legal requirements for settlement. (Reply Exceptions, pp. 7-8.) Moreover, only the Board of Examiners is imbued with the statutory authority to determine who is qualified to possess a teaching certificate in New Jersey. *N.J.S.A.18A:6-38*. That purview extends far beyond the limited scope of determining whether a teaching staff member has engaged in conduct which renders him unsuitable for a particular district. Instead, the Board of Examiners must be mindful of its responsibility to all New Jersey public school children by removing from its classrooms all teachers who are detrimental to their

welfare. In view of that heavy burden, settlement of a tenure matter, which may be prompted by vastly different concerns, has no bearing whatsoever on a revocation proceeding.

There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, ALJ Martone found that Howarth was a dedicated teacher who nevertheless engaged in inappropriate and, at times, reprehensible conduct with regard to sending and receiving inappropriate and pornographic e-mails at work. (Initial Decision, slip op. at 29, 30.) The record is replete with exhibits which no reasonable individual could argue were in any way appropriate for workplace viewing, let alone further dissemination. Howarth's claim that "everyone else was doing it" rings hollow and runs counter to the purpose of allowing mitigation. Although ALJ Martone expressed some regret at revoking Howarth's certificates, the Board of Examiners shares no such misgivings. Howarth has clearly engaged in conduct that negates any claim he can have as a role model for children. In fact, his behavior was harmful to students in that they lost valuable instructional time because he was otherwise occupied. Moreover, the fact that no student viewed this material on his computer is mere happenstance and not a cause for acclamation. As we have noted previously, "failing to get 'caught in the act' by students does not lessen the severity of [Howarth's] actions or the potential for harm." *In the Matter of the Certificates of Darlene Donahue*, Dkt. No. 0708-208 (Bd. of Examiners, March 31, 2009.) The potential for seeing the material existed and therefore does not lessen the severity of the offense. The Examiners therefore agree with the ALJ's conclusion that the only appropriate response to Howarth's breach is the revocation of his teaching certificates. (Initial Decision, slip op. at 30.)

Accordingly, on October 22, 2009, the Board of Examiners voted to adopt the Initial Decision and revoke Howarth's teaching certificates. On this 2nd day of December 2009, the

Board of Examiners formally adopted its written decision to adopt the Initial Decision in this matter, and it is therefore ORDERED that Dean Howarth's Teacher of Social Studies and Teacher of the Handicapped certificates be hereby revoked effective immediately. It is further ORDERED that Howarth return his certificates 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.