

IN THE MATTER OF THE TENURE :
HEARING OF DARLENE DONAHUE, :
SCHOOL DISTRICT OF PEMBERTON :

AND :
COMMISSIONER OF EDUCATION :

DARLENE DONAHUE, :
DECISION :
PETITIONER, :

V. :

BOARD OF EDUCATION OF THE :
TOWNSHIP OF PEMBERTON, :
BURLINGTON COUNTY, :

RESPONDENT. :

SYNOPSIS

In the first of these two consolidated matters, the petitioning Board brought tenure charges of conduct unbecoming against respondent – a tenured librarian/media specialist – for use of the District’s Newcomb Middle School circulation desk computer to access and view pornographic materials on the internet during school hours, and to send e-mail messages containing inappropriate, obscene, lewd or vulgar language to another district employee. In the second matter, Ms. Donahue appealed the District’s determination to withhold her 2003-2004 salary increments for the same reasons set forth in the first matter. Ms. Donahue contends that her intent when accessing improper internet material was to protect children from exposure to inappropriate websites by identifying flaws in the District’s content filtering software.

The ALJ identified the issue in this case to be whether respondent viewed inappropriate or pornographic websites for personal gratification or in order to expose flaws in the District’s filtering software and – if the latter – whether she had the right to engage in such conduct; therefore, the case hinged largely on respondent’s credibility. The ALJ found, *inter alia*, that: respondent’s testimony lacked credibility; respondent engaged in conduct unbecoming a public school teacher by using the District’s computers to access and view internet pornography during school hours; and respondent’s unbecoming conduct was sufficiently flagrant to justify her dismissal. The ALJ concluded that petitioning Board met its burden of proving the tenure charges against respondent, and that her dismissal is warranted.

The Commissioner concurs with the ALJ that the District has proven its charges against respondent by a preponderance of the credible evidence. Accordingly, the Initial Decision is adopted as the final decision in this matter. Respondent is dismissed from her tenured position as of the date of this decision, and the matter is referred to the State Board of Examiners for action against respondent’s certificate as that body deems appropriate.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

expert which, she avers, conclusively establishes that her motive was concern for the protection and safety of her students not satisfaction of her own personal prurient interests. In finding to the contrary, respondent maintains the ALJ failed to give fair consideration to all of the evidence in support of her position and, rather, focused only on that which supported her removal from her position. (Respondent's Exceptions dated March 21, 2006)

Upon a careful and independent review of the record, which included transcripts of the hearing conducted at the OAL², the Commissioner – finding respondent's exceptions wholly without merit – concurs with the findings and conclusions of the Administrative Law Judge (ALJ) that the District has proven its charges against respondent by a preponderance of the credible evidence and that termination from her employment is warranted.

In so determining, the Commissioner recognizes – as did the ALJ – that the central issue in this case:

is not whether Ms. Donahue attempted to access inappropriate or pornographic websites using the Newcomb Middle School circulation desk computer. Rather, the issue is whether she did so for personal gratification or in order to expose flaws in the District's internet content filter software and, if the latter, whether she had the right to engage in such conduct. Therefore, much of this case hinges on Ms. Donahue's credibility.
(Initial Decision at 26)

For the reasons meticulously detailed on pages 26-29 of his decision, the ALJ concluded that Ms. Donahue's "testimony raises so many more questions than it provides answers that it simply does not 'hang together'." (quote at 26) In this regard, the Commissioner is mindful that the ALJ's credibility determinations are entitled to deference. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their

² Hearing dates were December 1 and 2, 2004, May 16 and 19, 2005 and September 27, 2005.

credibility.” *In the Matter of Tenure Hearing of Tyler*, 236 N.J. Super. 478, 485 (App. Div.) certif. denied, 121 N.J. 615 (1989); *In the Matter of the Tenure Hearing of Frank Roberts*, 96 N.J.A.R. 2d (EDU) 549, 550. Indeed, with the 2001 amendment to the Administrative Procedure Act (*P.L.* 2001, c. 5, §4), the Commissioner “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” (*N.J.S.A.* 52:14B-10(c)) The Commissioner’s considered review of the entire record before her provides no basis whatsoever for alteration of the ALJ’s determinations.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons clearly stated therein. It is hereby directed that Darlene Donahue be dismissed from her tenured position in the School District of Pemberton Township as of the date of this decision. This matter shall be transmitted to the State Board of Examiners for action, as that body deems appropriate, against respondent’s certificates.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 24, 2006

Date of Mailing: April 24, 2006

³ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*