

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
GREGORY GOMES : ORDER OF REVOCATION
_____ : DOCKET NO: 0304-172

At its meeting of April 3, 2003, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Gregory Gomes from his tenured position with the Board of Education of Egg Harbor for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Gregory Gomes, Docket No. 148-5/02 (Initial Decision, November 1, 2002.) Gomes currently holds a Teacher of Social Studies certificate.

This case originated on May 20, 2002 when the Egg Harbor Board of Education certified tenure charges against respondent, Gregory Gomes. Gomes was employed as a Teacher of Social Studies. The district charged him with unbecoming conduct for accessing pornographic websites through the school district's computers.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) W. Todd Miller heard testimony on October 4, 2002. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on November 1, 2002.

In that decision, ALJ Miller found that Gomes was in the school library at the circulation desk when a school custodian discovered him looking at a pornographic web site. Gomes was aware that the custodian had observed him on the web site. (Initial Decision, slip op. at 3.) The district later discovered that Gomes had accessed pornographic web sites from computers in other district classrooms. Gomes testified that he accessed these web sites because he was trying to "spice up" a novel he had written.

Gomes never denied accessing these web sites and admitted that he knew he had violated Board of Education policy. After considering all the testimony, ALJ Miller found that Gomes' conduct was improper. The Judge found that, by viewing pornography in the school library, Gomes was visible to anyone. Furthermore, he noted that students could later access the web sites Gomes had viewed. (Initial Decision, slip op. at 9.) The Judge also recounted the district superintendent's testimony that he brought tenure charges against Gomes despite his prior unblemished record because of the repeated nature of the conduct, the fact that some of the sites involved teen pornography, the sites were accessed during school hours and accessible to students and Gomes' used the computers for commercial purposes. (Initial Decision, slip op. at 12.)

Judge Miller also reviewed the testimony on Gomes' behalf. Gomes testified on his own behalf and again explained his use of pornographic websites for purposes of enhancing his novel. He testified that he was careful when he worked in the classrooms and always locked the doors behind him. Judge Miller found Gomes to be remorseful and contrite. Nevertheless, the ALJ concluded that the "facts regarding the nature, extent and scope of this school teacher's access and viewing of pornographic material on the internet is unequivocally clear, as stipulated." (Initial Decision, slip op at 16.) Thus, the only remaining issue was whether Gomes' undisputed conduct was sufficiently flagrant to justify his dismissal. (Initial Decision, slip op. at 16.)

In considering the appropriate penalty, Judge Miller examined the testimony, exhibits and post-hearing briefs submitted by both sides. He concluded that Gomes used the district's computers for his own personal and financial gain and that his conduct was undisputed and in fact admitted. ALJ Miller also concluded that the district had met its

burden of proving the tenure charges by a preponderance of the credible evidence. Moreover, although Gomes had a prior unblemished record, that mitigating factor, did not outweigh his improper conduct. (Initial Decision, slip op. at 17.) Thus, based on his review of the entire record, the ALJ concluded that Gomes' breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 17.) Consequently, the ALJ ordered Gomes dismissed from his tenured employment.

In a decision dated December 23, 2002, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Gomes for the reasons expressed therein. Accordingly, the Commissioner affirmed Gomes' removal from his tenured employment with the Egg Harbor Board of Education and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Gomes' certificate.

Thereafter, on April 3, 2003, the State Board of Examiners issued Gomes an Order to Show Cause as to why his certificate should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board mailed the Order to Show Cause to Gomes by regular and certified mail on June 26, 2003. The Order provided Gomes' Answer to the Order must be filed within 20 days. Gomes filed an Answer on July 17, 2003. In his Answer Gomes admitted that the district had brought tenure charges against him. He also admitted that the Board had brought an allegation that Gomes had viewed pornographic materials over a two-month period on the district's computers during school hours on school property. Gomes also admitted that he lost his tenured position and that there was just cause for

Board of Examiners review. (Answer, ¶¶ 3-6). In the remainder of his Answer, Gomes argued that he should not lose his certification because he had been a model teacher for 15 years before in this district and for four years before that in another district. Gomes reiterated that he used the district's computers for the sole purpose of spicing up a novel he was writing and that no students were ever subject to the pornographic sites he had accessed. Gomes finally argued that he did not access these web sites for sexual gratification and that he had learned a valuable lesson by his dismissal from his tenured position. (Answer, ¶ 7.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on August 5, 2003, the Board sent Gomes a hearing notice by regular and certified mail. The notice explained that, since no material facts appeared in dispute regarding the tenure charges, Gomes was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that, upon review of the charges against him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his offense warranted action against his certificate. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. Gomes signed and returned the certified mail response card, but he did not respond to the hearing notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is to determine whether Gomes' conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of December 11, 2003, the State Board of Examiners reviewed the charges and papers Gomes filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined

that no material facts related to Gomes' offense were in dispute since he admitted all of the charges in the Order to Show Cause. Accordingly, his actions regarding viewing pornographic web sites on the district's computers constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Gomes' offense as set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to N.J.A.C. 6:11-3.6(a)1.¹ We find that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.A.C. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." Tenure of Sammons, 1972 S.L.D. 302, 321. There can be no dispute that Gomes' behavior was highly inappropriate for a teacher. As the ALJ pointed out, Gomes accessed 20 different pornographic sites on 44 different occasions. Moreover, he did this on district computers where students had the potential to access the same materials. Clearly, his repeated pattern of inappropriate conduct negates any claim Gomes can have to making a single mistake. His flagrant misuse of district resources speaks volumes

¹ On January 20, 2004, the State Board of Education adopted a new administrative code governing professional licensure and standards. N.J.A.C. 6A:9-1 et seq. Although this decision was mailed after the effective date of the new code, the Board of Examiners' decision in this case predates the effective date of

about his lack of judgment. Thus, the only proper response to Gomes' breach is revocation.

Accordingly, it is therefore ORDERED that Gregory Gomes' Teacher of Social Studies certificate be revoked on this 11th day of December 2003. It is further ORDERED that Gomes return his certificate to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Joan E. Brady, Secretary
State Board of Examiners

Date of Mailing: April 20, 2004

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

the new code and was therefore decided under the old code. All citations in this decision therefore are to the prior administrative code.