

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
DARLENE DONAHUE : ORDER OF REVOCATION  
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DOCKET NO: 0708-208

At its meeting of May 1, 2008, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education dismissing Darlene Donahue from her tenured position with the Pemberton Board of Education for unbecoming conduct. *In the Matter of the Tenure Hearing of Darlene Donahue*, Docket No. 177-6/03 (Commissioner's Decision, April 24, 2006). Donahue currently holds Teacher of Nursery School, Teacher of Elementary School and Teacher-Librarian certificates, all issued in September 1975.

This case originated in 2003, when the Pemberton Board of Education certified tenure charges against respondent, Darlene Donahue. Donahue was employed as a librarian in the district's Newcomb Middle School. The district charged her with unbecoming conduct, alleging that Donahue had used her school's 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.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Israel Dubin heard testimony on several days in December 2004 and May and September 2005. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on March 10, 2006.

In that decision ALJ Dubin found that “the issue in the case was not whether Donahue accessed pornographic sites but what her reasons were for so doing: [T]he 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, slip op. at 26.) The ALJ found that Donahue was not credible in her assertion that she accessed pornographic websites from a district computer in order to expose flaws in the district’s internet content filter software. (Initial Decision, slip op. at 26.) Among other things, the ALJ found that Donahue did not keep a list of inappropriate websites for the district to check nor did she report her findings to the district Public Information Officer or Network Engineer as she had stated. (Initial Decision, slip op. at 27.) Rather, the ALJ concluded that Donahue displayed many of the pornographic websites on her computer for minutes at a time and not just for a cursory glance. (Initial Decision, slip op. at 28.) The ALJ also noted that Donahue did send sexually explicit e-mails to another colleague and cautioned him to turn the screen and turn down the sound when viewing those e-mails, suggesting that she was no stranger to sexually explicit material. (Initial Decision, slip op. at 28-29.)

The ALJ concluded that the Pemberton Board had met its burden of proving the tenure charges against Donahue by a preponderance of the credible evidence. He further held that Donahue’s dismissal from her tenured position was warranted. (Initial Decision, slip op. at 29.)

In a Decision dated April 24, 2006, the Commissioner of Education agreed with the ALJ that the case turned on Donahue’s credibility and deferred to his credibility

determinations. (Commissioner's Decision, slip op. at 3-4). Accordingly, the Commissioner concurred with ALJ Dubin's conclusion that Donahue's actions constituted unbecoming conduct and warranted her removal from her tenured employment as a teaching staff member with the Pemberton Board of Education. (Commissioner's Decision, slip op. at 4.) The Commissioner transmitted the matter to the State Board of Examiners pursuant to *N.J.A.C.* 6A:9-17.6 for appropriate action regarding Donahue's certificates. (Commissioner's Decision, slip op. at 4.)

Donahue was dismissed from her tenured employment with the Pemberton Board of Education as a result of the unbecoming conduct proven in the tenure proceeding. On appeal, both the State Board of Education and the Appellate Division of the New Jersey Superior Court affirmed Donahue's dismissal from her tenured employment.

Thereafter, on May 1, 2008, the State Board of Examiners issued Donahue an Order to Show Cause as to why her certificates should not be revoked. The Order was predicated on the unbecoming conduct that had been proven in the tenure hearing.

The Board sent Donahue the Order to Show Cause by regular and certified mail on May 14, 2008. The Order provided that Donahue's Answer was due within 30 days. Donahue filed an Answer on June 4, 2008. In her Answer, Donahue admitted that the district had brought tenure charges against her. She also stated that she had filed an Answer in the tenure matter denying the allegations. (Answer, ¶ 3.) In the remainder of her Answer, Donahue admitted that the tenure charges were sustained and noted that the decisions in her case all spoke for themselves. (Answer, ¶¶ 5-7.) She denied that her conduct warranted license revocation. (Answer, ¶ 8.)

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on June 18, 2008, the Board sent Donahue a hearing notice by regular and certified mail. The notice explained that since no material facts were in dispute regarding the conduct proven in the tenure matter, Donahue 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 her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her offense warranted action against her certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any, based on the mitigating and aggravating circumstances presented. Donahue was also offered the opportunity to testify before the Board with regard to the sanction issue.

Donahue responded to the Hearing Notice on July 16, 2008. In that response, she claimed that her conduct was an aberration and “not in conformity with her true character.” (Hearing Response, p. 1.) She stated that the Board’s decision to revoke her licenses could not be based on the fact that she lost her tenure. (Hearing Response, pp. 4-5.) Donahue also argued that her conduct did not involve students, occurred over a three day period, and was never denied or covered up. (Hearing Response, p. 7.) She claimed this was an isolated act, that was not premeditated and which she sincerely regretted. (Hearing Response, pp. 7-9.) She also noted that her teaching record both before and after the incident was satisfactory. (Hearing Response, pp. 12-13.)

In addition to her written Hearing Response, Donahue testified before the Board to present mitigating factors for the Board’s consideration. In that testimony, Donahue

recounted her sincere regret over the incident, her long unblemished career record and her community service accomplishments.

The threshold issue before the State Board of Examiners in this matter is whether Donahue's conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of January 13, 2009, the State Board of Examiners reviewed the charges and papers Donahue filed in response to the Order to Show Cause, as well as her testimony before the Board. After reviewing her response, the Board of Examiners determined that no material facts related to Donahue's offense were in dispute since she never denied accessing the pornographic websites or sending inappropriate e-mails to a colleague on a school computer. Thus, Donahue has not denied that she engaged in the charges alleged in the Order to Show Cause.

The Board finds that these actions constitute conduct unbecoming a certificate holder. The State Board of Examiners must therefore determine whether Donahue's offense as set forth in the Order to Show Cause, represents just cause to act against her certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds 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. 6A:9-17.5*. Moreover, the Commissioner has long held that "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. After weighing both the mitigating and aggravating factors in the case, there can be no dispute that Donahue's

conduct negates any claim she can have to being a role model for students. Although no students were exposed to Donahue's internet searches or e-mails, that is only a matter of happenstance. Failing to get "caught in the act" by students does not lessen the severity of her actions or the potential for harm. In fact, her instruction to her e-mail recipient to turn away the screen and turn down the volume when viewing her e-mails belies her protestations that her actions were an unintended mistake. Moreover, in her presentation before the Board, it was clear that Donahue did not "stumble" upon these websites, but rather, engaged in purposeful activity to find them. Her behavior in this regard was not a one-time occurrence, but lasted at least three days and perhaps longer.

Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (Sup. Ct. 1943), *aff'd*, 131 N.J.L. 326 (E & A 1944). In this instance, Donahue's actions satisfy that standard. She abused the public trust and misused the District's computer in a school library setting. Her offense was central to her job function as a school librarian. In contrast, the only mitigating factors the Board had to consider were Donahue's heretofore unblemished record, and the character testimony she presented that she was well-liked by students and staff and had performed charitable works for her community. While those factors are laudable, they do not outweigh the aggravating circumstances surrounding her offense. Thus, the only proper response to Donahue's breach is revocation.

Accordingly, on January 13, 2009 the Board of Examiners voted to revoke Darlene Donahue's Teacher of Nursery School, Teacher of Elementary School and Teacher-Librarian certificates. On this 31st day of March 2009 the Board of Examiners voted to adopt its formal written decision and it is therefore ORDERED that the

revocation of Donahue's certificates be effective immediately. It is further ORDERED that Donahue return her 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.

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Robert R. Higgins, Secretary  
State Board of Examiners

Date of Mailing: 3/31/09

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

RRH:MZ: