

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
MARY LOU FORSELL : ORDER OF SUSPENSION
_____ : DOCKET NO: 1112-201

At its meeting of April 5, 2012, the State Board of Examiners (Board) reviewed a decision forwarded by the Acting Commissioner of Education that had dismissed Mary Lou Forsell from her tenured position with the West Windsor-Plainsboro Regional School District (WWP) for charges of unbecoming conduct, lack of professionalism and failure to respect the privacy rights of students. *In the Matter of the Tenure Hearing of Mary Lou Forsell*, Docket No. 50-2/11 (Acting Commissioner's Decision, January 9, 2012). Forsell currently holds a Teacher of Comprehensive Business Certificate of Eligibility With Advanced Standing, issued in July 1994 and a Teacher of Comprehensive Business certificate, issued in March 1997.

This case originated when WWP certified tenure charges of unbecoming conduct, lack of professionalism and failure to protect the privacy of students against Forsell. Specifically, the district alleged that Forsell displayed a huge collage in her classroom, comprised of more than one hundred photographs, many of which were objectionable. These photos had all been Photoshopped, many of which had students' faces visible. Many of the photos were drug or alcohol-related, homophobic, racially insensitive or insensitive as to economic status or ethnicity. The district also alleged that, during an observation of Forsell's class in June 2010, Forsell did not interact with the class for the first 20 minutes. In addition, two students were kissing during the class, other students were talking about a videogame and profanity was being used. At several times during the observation, Forsell left the classroom. Students began to leave the classroom with five minutes remaining in the period and Forsell, herself, left the room before the

period had ended.¹ In addition to the allegations stemming from the classroom observation, WWP alleged that Forsell had talked to a student about how the student was paying for her date's prom ticket in front of other students. Forsell allegedly also discussed that student's family finances with another parent in the presence of others. In addition, WWP alleged that Forsell made inappropriate comments to a Child Study Team member about why a family would choose to give birth to a child with Down Syndrome and referred to another special education student as a "sick freak." After the case was transmitted to the Office of Administrative Law (OAL) for hearing, Administrative Law Judge (ALJ) Jeff Masin heard testimony on August 22, 23 and 31, 2011. After receiving post-hearing submissions, the record closed on October 11, 2011 and the ALJ issued an Initial Decision on November 23, 2011. *In the Matter of the Tenure Hearing of Mary Lou Forsell*, OAL Docket No. EDU 02879-11 (Initial Decision, November 23, 2011).

In that decision, ALJ Masin found that Forsell admitted that the offensive photos that were entered into evidence had indeed been posted on her classroom bulletin board. *Id.* at 20. Judge Masin found it troubling that Forsell would allow the photo wall to continue since she had previously purged the collage of offensive images and was therefore aware that students "had a penchant" for posting inappropriate photos. *Ibid.* "Ms. Forsell has not suggested that these items were appropriate displays of the coursework, and they surely were not. Her failure to properly manage a display that she allowed to be existent in her classroom cannot be excused by her claims about how busy she was, especially as she was, by her own testimony, already aware of the misuse to which the wall had been put." *Ibid.* After noting that

¹ Although the allegations that stemmed from the classroom observation were made part of the district's tenure charges, the only allegations arising out of this charge that were adjudicated and discussed at the tenure hearing concerned the photo collage. Accordingly, the Board did not consider the other allegations from the classroom observation as part of its deliberations in this matter and will therefore not address Forsell's contentions regarding them.

“actual students [were] made part of the pictures through the Phototshop process,” the ALJ stated that “the responsibility rested upon the teacher to control her classroom and assure the propriety of the events therein....” *Ibid.* ALJ Masin also found that Forsell exhibited a lack of judgment when she had discussions, in front of other students, with a student of limited means regarding who was going to pay for tickets to the senior prom. *Id.* at 21. Forsell also demonstrated poor judgment when she mentioned the student’s “special circumstances” to another parent at a baseball game, ostensibly within the hearing of other parents. *Ibid.* ALJ Masin also found that Forsell behaved inappropriately when she called a student a “sick freak” and determined that her outburst “is hardly excused by her claim that she lost her temper.” *Ibid.* Finally, the ALJ found credible the testimony of Dr. Susan Kemler, a member of the Child Study Team, who recounted that, prior to an Individualized Education Plan meeting with a parent of a student with Down Syndrome, Forsell wondered aloud whether the parents knew about the child’s condition ahead of time and did not abort the pregnancy. *Id.* at 14-15, 21. ALJ Masin determined that the record demonstrated that Forsell had engaged “in conduct unbecoming a tenured educator and exhibited a lack of concern for the privacy of students.” *Id.* at 22. The ALJ noted that if the case only involved Forsell’s inappropriate conversations about prom tickets and her disregard for privacy, “the matter would not warrant more than a reprimand.” *Ibid.* However, the ALJ deemed Forsell’s “sick freak” and “abortion” comments “indefensible in the context in which they were made, whatever her private views might be.” *Ibid.* Those comments, coupled with Forsell’s “continued failure to manage, monitor or shutdown a site for the posting of what she had been alerted to as offensive and inappropriate materials that violated any common sense of what belonged on display in a classroom and which violated policies to discourage and stamp out

discrimination and bullying” led ALJ Masin to conclude that Forsell’s conduct warranted her removal from her tenured position. *Ibid.*

In a decision dated January 9, 2012, the Acting Commissioner of Education (Commissioner) concurred with the ALJ that WWP had sustained all but one of its charges against Forsell. (Acting Commissioner’s Decision, slip op. at 2). Accordingly, the Commissioner ordered Forsell’s removal from her tenured position in WWP and transmitted the matter to the Board for appropriate action regarding Forsell’s certificates. (Acting Commissioner’s Decision, slip op. at 3-4).

Thereafter, on May 17, 2012, the Board issued Forsell an Order to Show Cause as to why her certificates should not be revoked. The Order was predicated on the charges that had been proven in the tenure hearing. The Board sent Forsell the Order to Show Cause by regular and certified mail on May 24, 2012. The Order provided that Forsell’s Answer was due within 30 days. Forsell filed an Answer on June 12, 2012.

In her Answer, Forsell admitted that WWP had certified tenure charges against her but disagreed with the characterization of the charges, including the allegation that she “allowed” inappropriate photos to be displayed in her classroom. (Answer, ¶ 3). Forsell also “vehemently contest[ed]” that there was sufficient or just cause for any action against her teaching certificates and requested that the matter be dismissed or transmitted to the OAL for hearing. (Answer, ¶ 9).

Thereafter, pursuant to *N.J.A.C. 6A:9-17.7(e)*, on June 14, 2012, the Board sent Forsell a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Forsell 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 as well as arguments with regard to the appropriate

sanction in the event that the Board determined to take action against her certificates. It also explained that upon review of the charges against her and the legal arguments tendered in her defense, the Board would determine if Forsell's offense warranted action against her certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Forsell was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Forsell filed a response on July 25, 2012.

In that response, Forsell recounted her many positive evaluations and achievements in the district. (Hearing Response, pp. 2-4). Forsell stated that she had never been the subject of discipline prior to the tenure charges. (Hearing Response, p. 4). Forsell acknowledged that she had a collage in her classroom consisting of Photoshopped pictures and noted that she would purge the wall of distasteful pictures periodically. (Hearing Response, p. 4). She also admitted that she would remove photos when she passed the wall and noticed something distasteful but did not purge the collage "on a daily, or even weekly, basis." (Hearing Response, p.4). At the time of her classroom observation in June 2010, Forsell had been busy with end-of-the-year activities and had not purged the wall collage in several weeks. (Hearing Response, p. 4). In her Hearing Response, Forsell acknowledged that many of the photos were inappropriate and noted that she took responsibility for the collage at her tenure hearing. (Hearing Response, p. 5). Forsell also claimed that her conversation about the payment for prom tickets and a student's "special circumstances" were not public conversations and that there was no evidence that any third party overheard her conversation. (Hearing Response, pp. 5-6). Forsell denied that she made a derogatory comment about a special education student in the student's presence and denied making the "abortion" comment about another special education student to a colleague. (Hearing Response, p. 6). Finally, Forsell argued that there was no evidence presented that

demonstrated that she discriminated against classified students and that, but for the collage incident, her actions should not automatically result in any action against her certificates. (Hearing Response, pp. 6-7).

The threshold issue before the Board in this matter, therefore, is whether Forsell's conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 16, 2013, the Board considered the allegations in the Order to Show Cause² as well as Forsell's Answer and Hearing Response. The Board determined that no material facts related to Forsell's offense were in dispute since she did not deny that she had lost her tenured position as a result of the tenure proceedings brought against her. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C.* 6A:9-17.7(h). It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The Board must now determine whether Forsell's conduct, 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 Board 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. As the ALJ noted and the Acting Commissioner agreed, Forsell was guilty of conduct unbecoming a tenured educator by demonstrating a lack of concern for the privacy of her students and failing to manage her classroom properly. The Acting Commissioner also affirmed the ALJ's findings that Forsell had made inappropriate comments regarding "special

² As noted in Footnote 1, *supra*, the Board did not consider any allegations arising out of the classroom observation other than those related to the photo collage. The Board also mistakenly noted in paragraph 6 of the Order to Show Cause that Forsell was cited for chronic absenteeism; that allegation was not considered by the Board in its deliberations. Accordingly, when the decision refers to the Order to Show Cause, it should be understood that the above-mentioned allegations are excluded.

education, disability issues and matters relating to personal family decisions.” (Acting Commissioner’s Decision, slip op. at 2). There can be no dispute that Forsell’s conduct, in its totality, falls short of that expected of a role model for students. However, the Board cannot conclude that it has been demonstrated that Forsell’s behavior warrants the revocation of her certificates. Rather, her otherwise long and unblemished record, coupled with her willingness to accept responsibility for the display of inappropriate photographs in her classroom, merits a less severe punishment. The Board therefore determines that the appropriate response to Forsell’s conduct is a two-year suspension of her certificates.

Accordingly, on May 16, 2013, the Board voted to suspend Mary Lou Forsell’s Teacher of Comprehensive Business Certificate of Eligibility With Advanced Standing and her Teacher of Comprehensive Business certificate for a period of two years. On this 25th day of July 2013 the Board voted to adopt its formal written decision and it is therefore ORDERED that the two-year suspension of Forsell’s certificates be effective immediately. It is further ORDERED that Forsell 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.

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.