

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
SHAWN D. CIER : ORDER OF REVOCATION
_____ : DOCKET NO: 1617-115

At its meeting of November 1, 2017, the State Board of Examiners (Board) reviewed information it received from the Monmouth County Prosecutor’s Office (MCPO) and the Keansburg School District (Keansburg) regarding Cier. In March 2016 the MCPO began an investigation into Cier after an allegation that Cier had been making students feel uncomfortable by “looking them up and down and making comments about their clothing and bodies.” During the course of its investigation, the MCPO also uncovered pornographic images and videos that students had observed on Cier’s district-issued computer.

One of the students, who was a senior at Keansburg High School, was working on Cier’s computer when he saw inappropriate photographs in the trash file of the computer. He was with another student and informed a third individual as well. The students noted that there were approximately 10 inappropriately sexual pictures on Cier’s computer.

Cier is the holder of a Teacher of Art Certificate of Eligibility with Advanced Standing, issued in June 2005 and a Teacher of Art certificate, issued in July 2006. After reviewing the above information, at its December 8, 2017 meeting, the Board voted to issue an Order to Show Cause to Cier as to why his certificates should not be revoked.

The Board sent Cier the Order to Show Cause by regular and certified mail on December 11, 2017. The Order provided that Cier must file an Answer within 30 days. Cier responded on January 9, 2018. In his Answer, Cier indicated that he never looked a student, child, or young adult up and down in a lascivious manner. (Answer ¶ 3). Cier believes that any statements he made about a student’s clothing were “well within the boundaries of appropriate comments...” *Id.*

Cier stated that he uses Google Drive to bridge the work he does for school and at home and never intended to place private files onto the work computer. *Id.* at ¶ 4. He acknowledged that 12th grade student mentees saw the alleged photos on his computer when they came to his room when he was in an active class. *Id.*

Since there were material facts in dispute, the Board transmitted the matter to the Office of Administrative Law (OAL) on February 14, 2018 for hearing as a contested case. After the case was transferred to her from another Administrative Law Judge (ALJ), ALJ Jeff S. Masin heard the matter. The Board's counsel moved for summary decision. ALJ Masin found that a "review of the facts as shown by the evidence offered in support and opposition to the motion demonstrate that there is little if any dispute concerning the facts relevant to the determination of Mr. Cier's liability." (Initial Decision, July 7, 2020). The record closed on June 11, 2020, and the ALJ issued an Initial Decision on July 7, 2020. *In the Matter of the Certificates of Shawn D. Cier*, Dkt. No. EDE 2452-18 (Initial Decision, July 13, 2017).

After reviewing the testimony and the record, ALJ Masin found that there is undisputed evidence that Cier was entrusted by Keansburg school district with the iMac desktop computer, that he allowed certain student to access it, the computer contained images of a female performing fellatio on a male, Cier admits receiving the images, the images were observed by students, and Cier admits that the images were on the district provided iMac computer. *Id.* at p. 4.

ALJ Masin further found that it was clear "there is simply no justification for images such as described earlier to be in any section of a school-issued computer." *Id.* Teachers have a vital role as influencers of students and are therefore held to a high standard of performance. *Id.* at p. 6. ALJ Masin concluded that "there can be no question about whether Mr. Cier's conduct was unbecoming. He obtained the images, he was responsible for them, he did not assure that his

personal activity in communicating with this woman and obtaining from her such images was not kept entirely and unalterably separate from his work-related computers.” *Id.* at p. 7. Further, he determined that whether Cier intended for students to access the images is beside the point.

As far as the penalty, ALJ Masin found that the existence of pornographic images on a school issued computer is “entirely unacceptable.” *Id.* at p. 8. Cier’s attempt to explain how the material ended up on his school issued computer is of no moment as he “started the chain of events by failing to entirely preclude any entry of the material to the work environment in the first place.” *Id.* As such, the credibility of his explanation does not factor into either the determination of liability or the sanction. *Id.* Based upon the above, ALJ Masin found that Cier allowed the entry of pornographic pictures and video onto the iMac desktop and that the conduct was unbecoming. *Id.* at p. 9. The appropriate penalty based upon the nature of the act and precedents is revocation. *Id.*

Cier filed Exceptions in the case and the Deputy Attorney General (DAG) representing the Board filed Reply Exceptions.

In his Exceptions, Cier argues that summary decision is inappropriate because the ALJ needs to make credibility determinations for purposes of mitigation regarding the alleged unbecoming conduct. (Exceptions, p 5). Cier indicates that the images were on both his work laptop and desktop, thus corroborating that he worked remotely and moved multiple folders to a work computer. *Id.* The time stamps on the images were created on the machine between 4pm and 5pm, as well as 10 pm and 11:30 pm. *Id.* Cier argues that he had no knowledge that the images had inadvertently been transferred via the cloud and then deleted to the trash folder of his work computer. *Id.* Finally, Cier argued that the lesser penalty of suspension would be more fitting and appropriate in light the inadvertent file transfer.

In the Reply Exceptions, the DAG argued that the initial decision is “well-reasoned, amply supported by evidence, and should be adopted in its entirety.” (Reply Exceptions, p. 1). The DAG states that there are no genuine issues of material fact and therefore summary decision is appropriate in this matter. *Id.* at p. 6. The material facts contained in the Order to Show Cause were never disputed; Cier has never disputed the material facts, but rather only offered an explanation as to the presence of the images on his school issued desktop. *Id.* at p. 8. The DAG argues that Cier’s explanation does not amount to a genuine issue of material fact that requires disposition at a hearing. The reason that the pornographic images were placed on his school issued computer is insubstantial in nature and does not preclude summary decision. *Id.*

The DAG further argues that revocation is the appropriate penalty in this matter. Cier’s theory was already considered and rejected by ALJ Masin on page 8 of the Initial Decision. Specifically, ALJ Masin found that Cier started the chain of events by failing to entirely preclude entry of the material into the work environment. *Id.* at p. 10.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of October 29, 2020, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision and the other submissions, the Board voted to adopt the Initial Decision as issued.

“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. The Board agrees that summary decision is appropriate in this matter as the materials facts are undisputed. The pornographic images were on Cier’s school issued desktop, students had access to same, and students did in fact access the images. The Board disagrees with Cier’s

argument that summary decision is inappropriate because he argues there are mitigating circumstances. The Board finds that Cier's intentions regarding the images do not create a genuine issue of material fact and it agrees with ALJ Masin, that Cier initiated the chain of events that resulted in the images being on the computer and accessible to students; therefore, Cier engaged in unbecoming conduct. There needs to be no further analysis. Given the nature of the unbecoming conduct, and after reviewing the entire record, the Board agrees with the ALJ's assessment that a revocation is the appropriate penalty here.

Accordingly, on October 29, 2020, the Board voted to adopt the Initial Decision and ordered the revocation of Cier's certificates. On this 10th day of December 2020, the Board formally adopted its written decision to adopt the Initial Decision, and it is therefore ORDERED that Shawn D. Cier's Teacher of Art Certificate of Eligibility with Advanced Standing and Teacher of Art Certificate is hereby revoked, effective immediately. It is further ORDERED that Cier return his certificate to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

RS/KAG/rg

Date of Mailing: _____
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.