

CONFERENCE CALL MEETING

March 8, 2011

BOARD OF PUBLIC EDUCATION

MEMORANDUM

TO: BOARD OF PUBLIC EDUCATION
FROM: CAROL WILL, ADMINISTRATIVE ASSISTANT
SUBJECT: CONFERENCE CALL CALLING INFORMATION
DATE: 3/3/2011
CC: STEVE MELOY

The conference call is scheduled on **Tuesday, March 8, 2011 at 3:30 PM.**

Dial **1-888-556-4635** and use the password **3122**. This line will be available two minutes before the scheduled start of the call. When calling in to the connection number, you will hear the following:

- "Please enter the four digit password, followed by the # sign."
- "Welcome to the State of Montana conference call bridge, please state your name after the tone."
- As participants are connected, their names will be announced.

When only one person is connected, they will hear music. When others have joined the conference call, they will be able to talk to each other.

BOARD OF PUBLIC EDUCATION
CONFERENCE CALL MEETING AGENDA

March 8, 2011

March 8, 2011
3:30 PM

CALL TO ORDER

- A. Roll Call**
- B. Statement of Public Participation**
- C. Adopt Agenda**

PUBLIC COMMENT

The public will be afforded the opportunity to comment before the Board on the action items on the agenda prior to final Board action.

ACTION ITEMS

❖ LICENSURE COMMITTEE – Sharon Carroll (Items 1-2)

- Item 1 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN
REGARD TO DENIAL CASE #2009-05 (CLOSED)
Steve Meloy**

- Item 2 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN
REGARD TO DENIAL CASE #2010-08 (CLOSED)
Steve Meloy**

CALL TO ORDER

- A. Roll Call**
- B. Statement of Public Participation**
- C. Adopt Agenda**

PUBLIC COMMENT

The public will be afforded the opportunity to comment before the Board on every action item on the agenda prior to final Board action.

ACTION ITEMS

❖ LICENSURE COMMITTEE Sharon Carroll (Items 1-2)

ITEM 1

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN REGARD TO DENIAL CASE #2009-05 (CLOSED)

Steve Meloy

CONFIDENTIAL

BEFORE THE BOARD OF PUBLIC EDUCATION
STATE OF MONTANA

IN THE MATTER OF
THE APPEAL REGARDING
BPE DENIAL CASE #2009-05

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

This contested case arises from Dustan Toth's appeal of the Superintendent of Public Instruction's (Superintendent or OPI) denial of his application for issuance of a Montana Class 2 Professional Educator License, based on the Superintendent's conclusion that Mr. Toth did not meet the qualifications set forth in Mont. Code Ann. § 20-4-104(1)(b). This matter was heard before the full Montana Board of Public Education (BPE or Board) on December 2, 2010. Following the hearing on December 2, 2010, the Board took the matter under advisement, and at its regularly scheduled meeting on February 17, 2011, the full Board voted unanimously to uphold the Superintendent of Public Instruction's denial.

During the hearing on December 2, 2010, Mr. Toth was represented by attorney Penelope Strong, and OPI was represented by its Chief Legal Counsel, Ann Gilkey. Mr. Toth was present during the entire hearing on December 2, 2010. The proceedings were recorded.

Mr. Toth called as witnesses Virginia Prior, Debra O'Brien, Chrystal Carpenter, and Connie Peterson. However, the full Board voted unanimously to strike from the record the testimony of Connie Peterson because she was not named on the witness list

submitted by Mr. Toth. Mr. Toth testified on his own behalf, and also submitted a video presentation, which was played during the hearing. OPI called as witnesses Shirley Isbell, and Mr. Toth. Mr. Toth's Exhibit consisting of over 20 letters of character reference was admitted without objection. Mr. Toth's request that Dr. Scolatti's report be admitted into evidence was objected to by OPI on the basis that OPI was prejudiced because the report was not timely identified as a proposed exhibit pursuant to the Scheduling Order agreed upon by the parties. The Board voted unanimously to sustain the objection. OPI's Exhibits A, B, D, E and G were admitted without objection. The parties also agreed to stipulated facts, which are included below.

FINDINGS OF FACT

1. Dustan Toth received his Montana educator license, Class 2, K-8, in July 1999. He taught continuously in Havre, Montana from 1999 through February 2007.
2. During the 2006-2007 school year, Mr. Toth was a fourth grade teacher in the Havre School District.
3. Shirley Isbell lives in Havre and has been the Hill County Superintendent for 25 and one-half years. She hired Mr. Toth, has worked with him, and has known him for about ten years.
4. On March 1, 2007, Mr. Tim Crouch, a parent of one young man with whom Mr. Toth chatted on-line, contacted Ms. Isbell and provided her with a manila envelope which contained internet conversations involving his son and Mr. Toth, and a computerized photograph of Mr. Toth's head. Ms. Isbell could not remember the content of the internet conversations but recalls that they were not the proper messages for a

teacher to be sending. There were also inappropriate color photographs in the envelope, possibly of genitals. Ms. Isbell attempted to call the superintendent and the principal about this matter. However, they were not in so she called Mr. Toth who was next in the line of supervision. Mr. Toth came in and talked with Ms. Isbell.

5. Ms. Isbell handed the envelope to Mr. Toth and she gave him time to look through the materials in the packet. She then asked him if the person depicted in the photograph was him and he said yes. She asked Mr. Toth if he was responsible for this material and he said yes. Mr. Toth did not deny any part of it. Mr. Toth asked if it would be appropriate to send a letter of apology and Ms. Isbell told him that she did not think that would be sufficient but that he could do what he felt was right. Ms. Isbell allowed Mr. Toth to keep the packet of information and he walked out of the room with it the envelope.

6. The Havre School District enlisted the assistance of the Montana School Board Association to investigate the matter, and they commenced their investigation on March 12, 2007.

7. Mr. Toth was confronted by administrators regarding his instant messaging with Havre high school students on March 8, 2007. Mr. Toth resigned from his teaching position at Sunnyside Elementary School in Havre on March 12, 2007. It was Mr. Toth's personal decision to resign. OPI investigated the situation surrounding Mr. Toth's resignation pursuant to Mont. Code Ann. § 20-4-110. On August 23, 2007, OPI sent a letter to BPE recommending revocation of Mr. Toth's educator license. On June 9, 2008, Mr. Toth voluntarily surrendered his Montana educator license. In June 2009, Mr. Toth

submitted an application to OPI for reinstatement of his Class 2 Montana Educator License. On July 7, 2009, OPI denied Mr. Toth's application for reinstatement of his license, pursuant to § 20-4-104, based on character issues related to the previous investigation and subsequent surrender of his license. He appealed OPI's denial to BPE on August 5, 2009.

8. Dustan Toth is currently employed as academic coordinator at A.W.A.R.E. in Billings. A.W.A.R.E. contracts with the school district because the school district is not equipped to handle certain students. He implements EIPs for students together with a special education teacher. This position does not require a teaching license. When he applied for employment with A.W.A.R.E., Mr. Toth told them he had left education because of a personal life crisis and was looking for employment in education. Mr. Toth did not disclose to A.W.A.R.E. the circumstances that led to the surrender of his teaching license in Havre.

9. In February and March 2007, Mr. Toth had an account on My Space. On My Space, once a person has accepted another person as a friend, they can post comments back and forth. One also can look for people in specific geographical areas to befriend. Mr. Toth went on My Space nightly for a year.

10. At the time Mr. Toth was teaching fourth grade at Sunnyside Elementary School in Havre, Montana, he engaged in instant messaging with a person who said he was 16 years of age, and resided in Havre. Mr. Toth also engaged in instant messaging with another person who said he lived in Havre with his Mom and Dad, and was 17 years of age. Mr. Toth is sure that these two minors were going to school in Havre.

11. A lot of the instant messaging conversations with the minor boys were about sex. There were explicit conversations about specific sexual acts, talk about a potential hook-up for sexual acts, and conversation about drinking alcohol before the encounter. There was also talk about Mr. Toth providing Jack Daniels alcohol.

12. Mr. Toth never actually hooked up with the above two Havre high school students and he never provided alcohol. One person sought marijuana from Mr. Toth and Mr. Toth told him he was not into that.

13. OPI Exhibit A is a letter of apology, dated March 2, 2007, from Mr. Toth to Tim Crouch, the parent of one of the above minor boys, who brought the packet to Ms. Isbell. After Mr. Toth wrote this letter of apology, he continued to engage in sexual instant messaging with minor boys.

14. Mr. Toth did not use school computers or engage in this activity on school premises, during school hours, or with any of his students.

15. Mr. Toth did not seek employment as a substitute teacher.

16. Mr. Toth was told that flyers were being distributed at Wal-Mart and K-Mart in Havre which stated that he was a pedophile and which contained all of his personal contact information.

17. Mr. Toth is familiar with the Professional Code of Ethics (OPI Exhibit G) and he understood that they applied to him.

18. On March 15, 2007, Mr. Toth entered in-patient treatment at Rimrock Foundation in Billings, Montana. After a 28 day in-patient stay for treatment, Mr. Toth

was discharged from Rimrock. Following discharge, Mr. Toth obtained a sexual offender evaluation from a licensed clinical psychologist, Dr. Michael Scolatti.

19. Mr. Toth stated that he was never a threat to the third and fourth grade students he taught in Havre. He had an addiction and found support online. He made a mistake, he did what he had to do to correct it, and he has moved on. He educated himself. He is a different person now and will not go down that road again.

20. Debra O'Brien has been a Licensed Clinical Professional Counselor in Havre, Montana, since 1990. In 2007, Mr. Toth began counseling with her. He was emotionally distraught because it had been revealed that he was involved in internet sex-related conversation with high school students and that he was a gay man. Mr. Toth was full of shame. Mr. Toth was also concerned about his physical safety because Havre is not a place where gays and lesbians feel safe coming out of the closet.

21. Ms. O'Brien recommended that Mr. Toth be evaluated at Rimrock Foundation.

22. Ms. O'Brien has not been Mr. Toth's counselor since he moved to Billings.

23. Ms. O'Brien thinks Mr. Toth has changed since the incident in Havre.

24. Ms. O'Brien testified that Mr. Toth had a reputation as an excellent teacher.

25. Virginia Prior is a Licensed Clinical Professional Counselor, and an addiction counselor, in Billings, Montana. Mr. Toth was referred to her in May 2008, after he had completed the Rimrock After-Care Program. During the first year, Mr. Toth met with Ms. Prior once a week. Currently, he meets with her every other week. Ms. Prior believes this is a sufficient amount of counseling to assist Mr. Toth.

26. According to Rimrock's records, Mr. Toth was diagnosed with impulse control disorder. Ms. Prior's diagnosis was adjustment disorder, in that he was having difficulty "coming out" as a gay man.

27. In Ms. Prior's opinion, Mr. Toth is highly motivated to change his behavior, and he has good moral character. This opinion is based on Mr. Toth's feelings of guilt and shame, and that he is not covering up or making excuses for his behavior.

28. Ms. Prior believes there is not much risk that Mr. Toth will engage in internet sexual conversations with underage male students in the future. This opinion is based on Mr. Toth being "out" as a gay man, his ability to be in a healthy relationship with another adult male, and his attainment of skills and knowledge to deal with any depression, loneliness, etc. in an appropriate way.

29. Ms. Prior does not think Mr. Toth is a threat to children. Ms. Prior explained that it made sense that Mr. Toth contacted underage males, i.e., 16 or 17 years of age, because he was sexually developmentally delayed because he had been in the closet. Ms. Prior has not seen any indication that Mr. Toth has pedophilia nor do Rimrock's file indicate this.

30. Ms. Prior has worked with a lot of people who have struggled with issues similar to Mr. Toth's. Ten percent of her practice deals with gay, lesbian and transgender issues. She also has training in assessing risk. However, this hearing is the only time she has been asked to make a recommendation or a prediction regarding a client's future behavior. Ms. Prior believes in recovery. From a personal perspective, Ms. Prior would

not say that someone is not a danger if she did not believe it. Professionally, however, no one can know what someone will do in the future.

31. Chrystal Carpenter worked with Mr. Toth for one year at A.W.A.R.E, in Billings. A.W.A.R.E is a nonprofit organization with provides specialized educational services. Mr. Toth was Ms. Carpenter's supervisor. Mr. Toth and Ms. Carpenter worked with high school students with severe autism. Mr. Toth wrote lesson plans and came up with good ideas on how to work with the students. There has been great improvement with the students.

32. Ms. Carpenter thinks that Mr. Toth is very kind hearted, goes out of his way for people, is a team player, a great leader, and has professional qualities.

33. Ms. Carpenter is aware of the subject matter of the proceedings before BPE regarding Mr. Toth, and she has no reservations about leaving her six year-old daughter alone with Mr. Toth. He has always been open and honest about what he did in Havre. She never saw any risk to any high school student from Mr. Toth at A.W.A.R.E., and she feels it is safe for Mr. Toth to teach children.

CONCLUSIONS OF LAW

1. Proper notice of the hearing was provided as required by law. Mont. Code Ann. § 2-4-601.

2. Mont. Code Ann. § 20-4-103, **Issuance of teacher or specialist certificates**, provides:

The superintendent of public instruction shall issue all teacher and specialist certificates in the state of Montana. In issuing teacher or specialist certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher and

specialist certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher or specialist certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher or specialist certification.

3. Mont. Code Ann. § 20-4-104, **Qualifications**, provides in relevant part:

(1) A person may be certified as a teacher when the person satisfies the following qualifications. The person:

....

(b) is of good moral and professional character.

....

4. Whenever the superintendent of public instruction denies issuance or renewal of a teacher certificate, the applicant may appeal the denial to BPE. BPE may uphold a denial for immoral conduct related to the teaching profession. Mont. Code Ann. § 20-4-110 (1)(f), (7).

5. BPE has promulgated rules which include a broad definition of immoral conduct related to the teaching profession. ARM 10.57.601A. While the rule provides a range of examples of “immoral conduct,” the list is specifically not limited to only the listed conduct. Rather, the list provides guidance as to the types of conduct considered immoral in relation to the teaching profession.

6. Mr. Toth’s online sexual conversations and solicitation for sex with high school students, whom he knew to be under-aged local students, constitutes immoral conduct which is related to the teaching profession. As such, the evidence presented at the hearing supports the Superintendent of Public Instruction’s denial of issuance of a teacher certificate to Mr. Dustan Toth, pursuant to Mont. Code Ann. § 20-4-104(1)(b).

ORDER

IT IS HEREBY ORDERED that the decision of the Superintendent of Public Instruction to deny issuance of a teacher's license to Mr. Dustan Toth is upheld.

DATED this _____ day of March, 2011.

[Name]
Chair, Board of Public Education

ITEM 2

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER IN REGARD TO
DENIAL CASE #2010-08 (CLOSED)**

Steve Meloy

CONFIDENTIAL

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

IN THE MATTER OF DENIAL OF THE) BPE 2010-08
APPLICATION OF CHARLOTTE GONZALEZ)
) Findings of Fact, Conclusions
) of Law, and Order
)

Having under consideration the matter of the denial of the application for licensure of Charlotte Gonzalez, the Board of Public Education makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On August 19, 2010, the Deputy Superintendent of the Office of Public Instruction (OPI) denied the application of Charlotte Gonzalez for a Class 3 Administrator License due to deficiencies in academic requirements.
2. The denial was appealed by Gonzalez to the Board of Public Education (BPE) on September 20, 2010.
3. On October 6, 2010, the BPE notified Gonzalez that the Board would hold a hearing on February 18, 2011, regarding the denial of her application.
4. On February 18, 2011, at the designated time and place, the BPE held a hearing on the denial of Gonzalez's application for a Class 3 Montana Educator License.
5. Appellant, Gonzalez, did not attend the hearing.
6. At the hearing the Board accepted as evidence and reviewed letters which were sent to Gonzalez by the OPI and the BPE. They also reviewed a letter from an attorney, Ellen Pierce, who explained and countered allegations of deficiencies regarding Gonzalez's academic credentials and heard testimony from the Office of Public Instruction.

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CONCLUSIONS OF LAW

1. The Superintendent of Public Instruction has the statutory authority and responsibility to issue and deny Montana educator licenses pursuant to Section 20-4-103, MCA.
2. The Board of Public Education has adopted rules in Administrative Rules of Montana Title 10, Chapter 57 detailing the specific minimum requirements for licensure in Montana.
3. Appellant Gonzalez does not meet the minimum general academic requirements for a Montana educator license as required by ARM 10.57.201 and defined in 10.57.102.
4. Gonzalez's license in Utah was based on an Alternative Route Program which allows applicants for licensure to qualify for a license based on a test score without academic coursework equivalent to Montana's requirements.
5. Gonzalez's specific academic deficiencies for a Montana educator license include:
 - a. Failure to complete an educator preparation program accredited by the National Council for the Accreditation of Teacher Education (NCATE);
 - b. Failure to complete an educator preparation program which the Montana Board of Public Education has determined has standards essentially equivalent or greater than those required in Montana;
 - c. Failure to submit evidence of licensure from the National Board for Professional Teaching Standards; and
 - d. No current Class 5 Alternative License.
6. Appellant Gonzalez does not meet the minimum academic requirements for a Montana Educator License, Class 3, K-12 Principal as required by ARM 10.57.413, and 10.57.415-417.
7. Gonzalez's specific academic deficiencies for a Class 3 license include:
 - a. Gonzalez's application does not reflect three years as an appropriately licensed and assigned Class 1 or 2 teacher or Class 6 school counselor; and

1 b. Gonzalez does not currently qualify for a required, applicable endorsement for an
2 administrative license based on the deficiencies outlined above.

- 3 8. Gonzalez's application failed to provide evidence of academic credentials sufficient
4 to meet all of Montana's qualifications and requirements for a Class 3 educator
5 license and was therefore appropriately denied by the Superintendent of Public
6 Instruction.

7 ORDER

8 The Montana board of Public Education affirms the Office of Public Instruction's
9 denial of Charlotte Gonzalez application for a Class 3 Educator license.

10 Dated this ____ day of _____, 2011.

11
12 _____
Chair, Montana Board of Public Education

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14 **CERTIFICATE OF MAILING**

15 THIS IS TO CERTIFY that on this _____ of, _____ 2011, I caused a true and
16 exact copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER,
17 to by certified mail, postage prepaid, to the following:
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20 _____
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