



Board of Public Education

September 11, 2020

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APPOINTED MEMBERS:

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Elsie Arntzen,
Superintendent of
Public Instruction

Steve Bullock, Governor

EXECUTIVE DIRECTOR:

Pete Donovan

CERTIFIED MAIL RETURN RECEIPT

Mr. Jim Molloy
Galik, Bremer & Molloy, P.C.
777 E Main St, Suite 203
PO Box 70
Bozeman, MT 59771-0070

RE: BPE CASE #2018-12

Dear Mr. Molloy:

The Board of Public Education (Board) received a request on December 14, 2018, from Elsie Arntzen, State Superintendent of Public Instruction (Superintendent), for revocation of Ms. Oelkers' Montana educator Class 2 license, endorsed in Spanish K-12. The Superintendent asserted that Ms. Oelkers violated § 20-4-110(1)(f), MCA, by behaviors constituting "immoral conduct related to the teaching profession" as generally defined in ARM 10.57.601A.

On September 10, 2020, the Board held a hearing on a motion to dismiss filed on behalf of Ms. Oelkers. Prior to the hearing, you, on behalf of Ms. Oelkers, and Tara Harris, on behalf of the Office of Public Instruction (OPI), had filed briefing with the Board on the motion. At the hearing, you and Ms. Harris orally argued the motion and responded to questions from Board members and counsel. The official audio minutes from the hearing, including the oral argument, the Board's deliberations, and the Board's decision are available at <http://bpe.mt.gov/Portals/119/Audio%20Files/2020%20Files/9-10-2020BPEMeetingafternoon.mp3>

At the end of oral argument, counsel for the Board advised the Board that it did not have the authority to decide the constitutional question raised by Oelkers regarding due process. The Board's deliberations instead primarily addressed OPI's receipt of notification of alleged misconduct, whether OPI received the notification from a credible source, the timing of OPI's actions after receiving

notification of alleged misconduct, whether the motion to dismiss was properly before the Board, and related legal issues. The basis for Oelkers' motion was the Board's rule at ARM 10.57.601(2), which provides:

(2) The Superintendent of Public Instruction may initiate a request to the Board of Public Education for discipline against an educator/specialist's license within 12 months from the date of receiving direct notification of alleged misconduct from a local school district board of trustees or from any other credible source.

The presentation to the Board in the briefing and at the hearing included the following information: OPI had received notifications of alleged misconduct more than 20 times between April 7, 2017, and December 13, 2017; those notifications to OPI included numerous contacts from a household member of the alleged student victim, who was akin to a family member of the student; OPI did not attempt to or contact the student prior to December 14, 2017; and OPI did not file a request for revocation with the Board until December 14, 2018.

At the close of deliberations, the Board voted 5-1 to grant the motion to dismiss based upon OPI's failure to timely initiate the revocation of Ms. Oelker's license. According to § 20-4-110(7), MCA, this decision of the Board is final.

Sincerely,

A handwritten signature in cursive script that reads "Pete Donovan".

Pete Donovan
Executive Director

Cc: Sharyl Allen, Deputy Superintendent, OPI
Julia Swingley, Chief Legal Counsel, OPI
Kristine Thatcher, Educator Licensure Manager, OPI
Rob Stutz, Counsel, Agency Legal Services