

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF TEACHING

In the Matter of the Proposed
Revocation/Suspension of the
Teaching Licenses of David M. Peterson

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

This matter was heard by Administrative Law Judge Beverly Jones Heydinger beginning at 9:00 a.m. on January 22, 2003 and continued on January 23, 2003 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401. There were no additional submissions following the hearing.

Bernard E. Johnson, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106, appeared on behalf of the staff of the Minnesota Board of Teaching. Dorothy J. Buhr, Esq., Sisam & Watje, P.A., 7230 Metro Boulevard, Minneapolis, Minnesota 55439-2128, appeared on behalf of the Licensee, David M. Peterson.

NOTICE

This Report is a recommendation, not a final decision. The Board of Teaching will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Dr. George J. Maurer, Executive Director, Minnesota Board of Teaching, 1500 Highway 36 West, Roseville, Minnesota 55113-4266, to ascertain the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

1. Did the Licensee use school district computers to access or to attempt to access pornographic materials from the Internet?
2. If so, does such use constitute immoral conduct?
3. Is disciplinary action appropriate?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. David M. Peterson (“the Licensee” or “Mr. Peterson”) is a teacher who holds four Minnesota teaching licenses. They are Elementary Remedial Reading, Elementary Education, Mild to Moderate Mentally Handicap, and School Psychologist. These licenses expire June 30, 2007.^[1]

2. Licensee held the position of school psychologist for Eden Prairie Independent School District (“District”)^[2] from August 31, 1987^[3] to March 18, 2002.^[4]

3. Mr. Peterson worked concurrently at Forest Hills Elementary School (“Forest Hills”) and Cedar Ridge Elementary School (“Cedar Ridge”) in Eden Prairie.^[5] Both schools educate children between the ages of 5 and 10 from kindergarten to the fourth grade.^[6] Mr. Peterson worked at Forest Hills on Mondays, Wednesdays, and every other Friday; and he worked at Cedar Ridge on Tuesdays, Thursdays, and every other Friday.^[7] Mr. Peterson’s duties as school psychologist involved identifying and qualifying students for special services, attending associated meetings, and participating in crisis intervention. He provided services to children with emotional behavior disorders and mental disabilities, and to their teachers and staff.^[8]

4. Mr. Peterson had a private office at each school, located in the main office suite, along with other staff such as the principal, health and social services, secretaries, and the computer managers.^[9] Mr. Peterson kept the door to his office locked whenever he was away from either of his offices.^[10]

5. The District was using the Windows NT™ operating system and the Novell™ network operating system in all classrooms and offices in February 2002. The operating system required all users to have a unique user identification name and secret password. This feature allowed the computer network staff to assign access rights for specific groups of people such as staff or students, or to individuals as needed. A user was required to enter both the user identification name and the password in order to gain access to the District’s network server, the District software and the Internet. A user could access the network server, and thus all of the software made available to the District as well as the Internet, from any computer workstation terminal within the District by logging on with their unique user identification name and password.^[11]

6. In 1997 the District issued Electronic Communication Regulation 3.4.1. It prohibited access to inappropriate material, including profane, obscene (pornographic), violent, or discriminatory material.^[12]

7. The District adopted new policies, effective January 28, 2002.^[13] The 2002 policies address, *inter alia*, electronic communications and the consequences of use or access violations (section 2.3.1), risk of use (section 2.4), and notice of no privacy rights (section 4.1). Section 2.3 states that the District will filter, block or otherwise prevent access or communications that are obscene. Section 2.4 explains that it is not possible or practical for the District to filter or monitor all electronic communications. It also states that violations of the policy or regulations may result in consequences that include, *inter alia*, termination of employment.^[14]

8. Under the 2002 policy, sections 2.1 and 2.2 state that users “are prohibited from accessing, reviewing, uploading, downloading, storing, printing, posting, receiving, transmitting, or distributing ... pornographic, obscene, or sexually explicit images or communications.” Section 2.6 states that employees who receive inappropriate images or communications are to inform their supervisor, the network manager, or the director of operational technology. Section 2.7 states that users will immediately inform a district official of inadvertent access to unacceptable images or communications.^[15]

9. The District prepared training materials addressing its policies on electronic communication. These materials are clear that District computers may not be used to access sexually explicit material.^[16] Some also directed staff to report inappropriate sites.^[17] It is not clear whether the Licensee was present at any of the training on these policies or received the brochures. However, employees who missed training were required to obtain the information that was covered.^[18]

10. Mr. Peterson had a computer workstation at each office.^[19] Both computers were “kit” computers, assembled by a former member of the computer staff.^[20] Mr. Peterson had access to the District network server from each of his office computers by logging on with his user identification name and password. He used his office computers to access District software and the Internet.^[21]

11. Around November 2001, a computer network staff member added new software to Mr. Peterson’s two computers.^[22] Mr. Peterson began having computer problems on both computers; he could no longer use the District website to access the Internet. Instead, Mr. Peterson gained access to the Internet by using the Netscape™ browser which was made available to users by the District.^[23] It is unclear in the record whether by-passing the District’s website in order to access the Internet and instead using Netscape™ resulted in compromising the effectiveness of the filtering software located on the network server.

12. Between November 2001 and March 2002, Mr. Peterson observed “button” icons displayed on his screen while accessing the Internet.^[24] He contacted network staff via email or otherwise on several occasions from November 2001 through

February 2002 to alert them to this and other problems with his computer. The principal for Cedar Ridge did receive copies of e-mails from Mr. Peterson regarding computer problems.^[25]

13. A technology staff member attempted to correct problems with Mr. Peterson's computer but was not able to complete the work.^[26] Mr. Peterson believed that the technology staff member periodically worked on his computer because he occasionally saw the network manager's user name on his computer. The last time network staff worked on Mr. Peterson's computer was the week prior to the first occurrence of pornography appearing on Mr. Peterson's computer.^[27]

14. Mr. Peterson acknowledged finding pornography on his computer on Wednesday, February 27, 2002 at his Forest Hills office, and again on Thursday, February 28 at his Cedar Ridge office.^[28]

15. Sometime in the morning of Wednesday, February 27, 2002, at Forest Hills, Mr. Peterson used the Netscape™ browser and entered the search term "Debka" to access an Israeli news service that he used occasionally for information pertaining to Afghanistan. Mr. Peterson observed a postage size "stamp" icon labeled "swim". When he dragged his cursor over the icon, pictures of bikinis appeared on his monitor. Mr. Peterson proceeded to click on the "X" box at the top right of the window in an effort to close the unwanted web page. The window did not close, rather Mr. Peterson observed a looping effect; a cascading, layering of pictures appeared on his screen. Mr. Peterson next clicked on both the forward- and back-arrow navigation icons in an effort to return to his original search request, and the looping accelerated. Since the computer did not have an on/off switch, Mr. Peterson then pulled the power cord from the outlet in order to end the cascade of pictures.^[29] Mr. Peterson did not report the incident.^[30]

16. Sometime in the late afternoon on Thursday, February 28, 2002, at Cedar Ridge, Mr. Peterson again accessed the Internet through Netscape™ to conduct research concerning dual diagnoses of ADHD (attention deficit and hyper activity disorder). During his search, Mr. Peterson saw the word "gallery" appear on the screen together with a series of faces inside a row of icon boxes, each with the word "pics" underneath the icons. Mr. Peterson proceeded to click the "X" box at the top right of the window in an effort to close the unwanted web page, but the computer began the looping behavior, he hit the "X" again and the pictures accelerated and he again pulled the power plug.^[31]

17. Mr. Peterson went to the Cedar Ridge principal's office to report the problem and then to the Cedar Ridge network manager's office but neither one was there. He made no other attempt to report the incident by email or by phone.^[32] On Friday, March 1, the Licensee was at Cedar Ridge working with teachers for a "workshop day."^[33] On Monday, March 4 President Bush visited the Eden Prairie High School, and many staff, teachers and students attended.^[34]

18. On Wednesday, March 6, 2002, at Forest Hills, Mr. Peterson accessed the Internet late in the day. He observed a “phenomenal number” of icon buttons on his screen and he again pulled the plug.^[35]

19. The Licensee saw Yvonne Steele, the Forest Hills network manager, down the hall from his office. Mr. Peterson told Ms. Steele that buttons and icons were appearing, that he was having problems with his computer, and asked that she look at it. Ms. Steele stated that the computer staff was too busy to look at his computer and that nothing more could be done until summer.^[36] Ms. Steele does not recall this encounter. She does not recall any conversation with Mr. Peterson about the icons or the unwanted material although she does recall conversations about problems with his computer.^[37]

20. Forest Hills and Cedar Ridge each had their own network server.^[38] Each server utilized Cyber Patrol™ filtering software to block material deemed harmful or inappropriate for educational purposes and to prevent such material from reaching a computer’s internal hard drive. The company that owned Cyber Patrol™ periodically provided the District with updated lists of known pornographic Internet sites that should be blocked.^[39] The filtering software generated a record of the Internet websites where access was attempted and denied. The log included the date, time, user name and website address.^[40] When access to a website was denied, the connection to the site was not made and the denied material did not reach the user.^[41] Computer network staff periodically reviewed the denial log.^[42] Filtering software does not eliminate all access to unwanted or inappropriate websites; unwanted websites may get past the filtering software, reach an individual workstation, and be stored on the hard drive.^[43]

21. On February 26, 2002, Steve Simon, the director of operational technology for Eden Prairie Schools, received notification from a staff member that website names suggestive of sexual content appeared on a routine check of the denial log generated by the filtering software. Mr. Simon notified the human resources director, Mary Bollinger, about the log report. Ms. Bollinger asked Mr. Simon to watch the denial logs for a few days to see if the attempted access was repeated.^[44]

22. The Cedar Ridge network manager generated an access control log as part of the investigation. The access control log contains data regarding the identity of Internet websites that Mr. Peterson’s computer accessed or attempted to access at Cedar Ridge as well as the date and time of each website attempt, between 3:36:16 pm and 4:12:28 pm on Thursday, February 28, 2002.^[45] No access log was printed for any other date.^[46]

23. The access log distinguishes between websites that had been accessed in the past and were already in the computer hard drive’s cache (“cache hit”) and those websites that had not been accessed before (“cache miss”).^[47] The access log lists 256 websites accessed during the 36 minutes.^[48]

24. The access log shows attempts by the computer to establish connections to web sites or portions of them, but does not differentiate between actual access and

attempted access^[49]. The access log does not indicate whether any keystrokes were typed in order to attempt access, or whether the site was connected through a “hot link”.^[50] The log does not show whether websites appeared on Mr. Peterson’s computer screen.^[51]

25. A denial log was also generated as part of the investigation.^[52] It identifies the Internet websites for which the filtering software denied access or attempted access from Mr. Peterson’s computers at Cedar Ridge and Forest Hills and includes the date and time of each website denial on February 21, 26, 27, and 28, 2002.^[53] The access log overlaps with a portion of the denial log for February 28, 2002. It shows that the user was denied access to 11 sites during the time covered by the access log.^[54]

26. Mr. Simon concluded that pornographic sites had been accessed from Mr. Peterson’s computers.^[55] He reviewed the access and denial logs with Ms. Bollinger.^[56]

27. Mr. Peterson received a telephone call at his home on the afternoon of Thursday, March 7, 2002 from the District human resources secretary informing him that Ms. Bollinger was requesting that he come to the office that day. Mr. Peterson declined because he was at home taking care of his son who was ill. Mr. Peterson asked to speak directly to Ms. Bollinger, but was informed that she would not speak with him.^[57] A meeting was arranged for the following day at 8 a.m. at the District administration building.^[58]

28. Mr. Peterson arrived at the administration building at about 8:00 a.m. on March 8, 2002. Ms. Bollinger arrived with the principals of Forest Hills and Cedar Ridge. Mr. Peterson was handed a letter informing him that the school district was conducting an investigation “regarding complaints about your behavior,” and that he was being suspended with pay, pending an investigation, and would be contacted for an interview.^[59] Mr. Peterson asked for an explanation but Ms. Bollinger would not explain more.^[60]

29. A “Loudermill” hearing was held on Tuesday, March 12, 2002^[61] at the District offices.^[62] Present at the hearing were Ms. Bollinger, the Human Resources Director, the principals of Forest Hills and Cedar Ridge, legal counsel for the District, two union representatives, and Mr. Peterson.^[63]

30. Mr. Peterson was asked to explain whether he had accessed pornography. Mr. Peterson’s reply was that he did not deliberately access pornography.^[64] The two principals had no opinion about whether Mr. Peterson was telling the truth.^[65] Neither one could conclude from the information presented that day whether Mr. Peterson had intentionally accessed the pornographic websites.^[66] The district did no further investigation after the March 12 meeting.

31. Mr. Peterson entered into a separation agreement with the District dated March 18, 2002.^[67]

32. On or about March 18, 2002 Mr. Simon removed the hard drives from Mr. Peterson's computers. Mr. Simon scanned both hard drives using EnCase™ software and then generated reports of the hard drive contents. The images sealed as exhibits 6 and 7 came from Mr. Peterson's hard drives. The hard drives have remained locked in the director's office since that time.^[68]

33. On March 21, 2002, in accordance with Minnesota statute, Ms. Bollinger notified the executive director of the Board of Teaching that Mr. Peterson had been suspended with pay on March 7, 2002 pending investigation into misconduct.^[69] There is no reference to Mr. Peterson's resignation.

34. On April 15, 2002, at Ms. Bollinger's request, a network manager accessed one of the sites listed on the denial log.^[70] The network manager went outside of the filtering system, reviewed the denied website entitled "sexualbikini.com" and printed images contained on the site.^[71] The images were not obtained from either of Mr. Peterson's hard drives.^[72]

35. On or after April 16, 2002 the District provided the Board with images it had captured from Mr. Peterson's hard drives using the EnCase™ software, and the images from the denied "sexual bikini" site.^[73] One set of images has been redacted in order to show file and path data associated with the images.^[74]

36. The Board obtained documentation from the District, including the access and denial logs, the pictures taken from Mr. Peterson's hard drive, and the pictures from the denied website. The Board sent a letter to Mr. Peterson, offering him the opportunity to respond. Through counsel, Mr. Peterson replied to the Board's inquiry.^[75] The board did not retain anyone with a computer background to review the information it received.^[76]

37. At no time between November 2001 and March 2002 did the District check Mr. Peterson's hard drives for a virus. However, the District was not aware of pornography inadvertently appearing at its other work stations during this time and there was no report of a virus on its servers.^[77] The Board did not check the hard drives.^[78]

38. The Internet is relatively insecure and there is broad access to it. The District installed filters to stop access to certain undesirable sites, but it could not guarantee what might be accessible through the District's computers.^[79] Some groups or organizations can insert programs on to other websites and display unsolicited images.^[80] When a web browser makes a connection to a site, it establishes a "session". The browser provides an area to display pictures or other information and to execute small programs provided by the other computer.^[81]

39. On many systems, an "X" in the upper right corner is clicked to close a window. A replacement program can be inserted so that rather than closing the window, another image appears when the X is clicked.^[82]

40. Computer programs can also attach to a web session so that “hits” can be generated to a web site. Certain artifacts from these sites will be retained on the computer hard drive.^[83]

41. Web browsers may have a leading window and other “child” windows opened concurrently. Such “child” windows may not be in plain view. If one closed a visible window, the “child” windows may appear, or may be closed. An access log would record the “child” windows in its cache since the connection had been made, regardless of whether the user saw the image.^[84]

42. In this case, the access log showed that many different web “sessions” or windows were accessed in quick succession or in parallel. It cannot be determined from the access log whether each one was accessed by the user or through an automated process.^[85]

43. Since a browser automatically places each accessed file in its cache, one cannot determine from the log alone whether the file was displayed to the user.^[86]

44. Mark Schneider, an experienced computer architect and troubleshooter, attempted to follow the path recorded on the access log (Ex. 4). He found that one of the listed websites contained legitimate information but began to display pornographic images in rapid succession, as “child” windows. He did not realize it until he attempted to close the browser session. He could not close the windows and ultimately cut the power to end the session. For one of the sessions, Mr. Schneider was able to isolate a particular virus.^[87]

45. Based on his review, Mr. Schneider could not conclude whether Mr. Peterson’s access to pornographic images was intentional.^[88]

46. An Internet site may have several separate addresses for portions of one screen. The separate parts may include news feeds, icons, pictures, movies or sound bites. Thus, several web “addresses” may be accessed simultaneously, and will appear on the access log.^[89]

47. Although many addresses may be accessed, an image for each one may not appear on the user’s computer screen, depending upon the structure of the website.^[90]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board of Teaching and the administrative law judge have jurisdiction in this matter.^[91]

2. The Board has complied with all relevant substantive and procedural requirements of statute and rule.

3. The Licensee received proper and timely notice of the hearing in this matter.

4. The Board of Teaching may suspend or revoke a teacher's license on the grounds of immoral conduct.^[92]

5. The Board has the burden of establishing the facts at issue by a preponderance of the evidence.^[93]

6. The Board has not established by a preponderance of the evidence that the Licensee intentionally accessed or attempted to access pornography using the District's computer system.

7. The Board has not established by a preponderance of the evidence that the Licensee engaged in immoral conduct.

8. The above Conclusions are arrived at for the reasons set out in the Memorandum below, which is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Board of Teaching take no disciplinary action against the teaching licenses of David M. Peterson.

Dated this 7th day of March 2003.

S/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Transcript prepared by court reporter Jane E. Schollmeier, Kirby A. Kennedy & Associates (952) 922-1955.

MEMORANDUM

The burden is on the Board of Teaching to demonstrate by a preponderance of the evidence that the Licensee has engaged in immoral conduct. That is the sole basis upon which it proposes to take disciplinary action. The Board alleges that the Licensee engaged in immoral conduct because he accessed, or attempted to access,

pornographic websites from his office computers in the Eden Prairie School District. Such behavior may violate school policies concerning proper use of school equipment, and may also violate policies requiring staff to inform school officials when pornographic websites are accessed. It is not clear that such behavior is “immoral”, as that term is commonly understood.

In Falgren v. Board of Teaching, the Supreme Court acknowledged that “immoral conduct” is a nebulous term, and may be construed differently in different parts of the State.^[94] Also, the appropriate discipline may vary with the conduct that is proven.^[95] There is little guidance in case law or statute as to what constitutes “immoral conduct”. In another action involving a teacher, the administrative law judge applied a dictionary definition that was subsequently cited with favor in an unpublished Court of Appeals decision. “Immoral” was defined as “corrupt, indecent, depraved or dissolute, or [was] conduct which offends the morals of the community in which it occurred.”^[96]

In its discussion of the definition, the Court of Appeals noted that the terms share “a common element of wrongful intent or conscious disregard of established mores such that the act itself bespeaks or permits a presumption of knowledge of its wrongful character.”^[97] The reasoning of the Court of Appeals, that immoral conduct implies some degree of intent to commit the wrongful act, is persuasive. Since one cannot know the Licensee’s state of mind, “intent” must be inferred from the surrounding circumstances.^[98] Thus, in this case, it is important to decide whether the Licensee intended to access the pornographic websites.

The Board failed to show by a preponderance of the evidence that the Licensee intentionally accessed the pornographic sites. The Licensee acknowledged that such sites did come up on his computer monitor. However, both the technology supervisor for the District, and the expert retained by the Licensee, stated that buttons or icons may appear on a computer screen without the user specifically typing in the web address for the button or icon. Also, the expert testified, and the technology supervisor did not dispute, that images may appear when a cursor passes over a button or icon, and that attempts to close the screen may trigger a “cascade” of such images.

In addition, both the technology supervisor and the expert testified that several addresses may be recorded for the same moment, even though only one screen was viewed. It cannot be determined from the computer access log whether all of the addresses were viewed by the user. As the expert testified, some “child” windows may not be in plain view.

The witnesses were quite consistent in their description of the Lauderhill hearing. The Licensee denied that he deliberately accessed pornographic sites, but acknowledged that in the course of using the Internet, he had come across pornographic sites on two occasions, for several minutes each time. He said that some sites were “denied,” that is, that he could not access them, but he had gotten through on a couple of sites.^[99] He explained that buttons appeared on websites he was using for research, and when his cursor moved across the buttons, images appeared, that when

he attempted to close them by pushing the “x” that more images appeared, and that he ultimately unplugged his computer to stop the cascading.

The Licensee admitted that he did view some inappropriate sites. Neither the access log nor the denial log provide any evidence of how that occurred. Neither the District nor the Board attempted to follow the log to duplicate the route that was taken. The Licensee’s expert made that effort and reported that certain icons and buttons appeared unexpectedly and cascading images followed. This is consistent with the Licensee’s testimony, and with the access log’s report that multiple sites were accessed in rapid succession.

In matters concerning a professional license, the Supreme Court has stated that the preponderance of the evidence standard is appropriate, but discipline should be imposed only where the evidence has “heft.”^[100]

In this case, the Board had little evidence except the access log and the denial log, along with images taken from websites that the Licensee may have viewed. Such slight evidence is insufficient to deny a professional license, even when the Licensee acknowledged that pornographic images did appear on his screen. The Board had no evidence to contradict the Licensee’s explanation which was corroborated by Mr. Schneider’s review of the access log. The Board failed to show that the Licensee intended to access the pornographic sites. Merely looking at material that appeared on the screen would not rise to the level of “immoral conduct.”

In 2001, the Board proposed to amend the disciplinary statute to clarify that “willful use of school technology to access pornography” should be a separate basis for discipline. The effort failed, in part because at least one legislator believed that “immoral conduct” was broad enough to cover the proposed amendment, and he was concerned about specifying types of behavior in the statute.^[101] Although the legislation did not pass, it is noteworthy that it attempted to include “willful” use of technology to access pornography, and not inadvertent access.

The Licensee did not report that pornographic images appeared on his computer. Although this may be a violation of the District’s policy, failure to report inappropriate material does not rise to the level of “immoral conduct.”

It is important to emphasize that the issue for the Board of Teaching is not whether the Licensee violated the District’s electronic communications policy, per se, but whether that violation constitutes “immoral conduct.”

B.J.H

^[1] Ex. 1.

^[2] T. 98 (Bollinger).

^[3] Ex. 20.

- [\[4\]](#) Ex. 15.
- [\[5\]](#) T. 213 (Peterson).
- [\[6\]](#) T. 175 (Hytjan); 186 (Allegrezza).
- [\[7\]](#) T. 165 (Hytjan); 187 (Allegrezza).
- [\[8\]](#) T. 214-215 (Peterson); T. 195 (Allegrezza).
- [\[9\]](#) T. 166 (Hytjan); 188 (Allegrezza).
- [\[10\]](#) T. 167 (Hytjan); 190 (Allegrezza).
- [\[11\]](#) T. 35-37 (Simon).
- [\[12\]](#) Ex. 9.
- [\[13\]](#) Exs. 10, 10A.
- [\[14\]](#) Ex. 10.
- [\[15\]](#) Ex. 10A.
- [\[16\]](#) Exs. 11, 12, 14.
- [\[17\]](#) Ex. 12.
- [\[18\]](#) T. 173 (Hytjan); 193 (Allegrezza).
- [\[19\]](#) T. 167 (Hytjan); 190 (Allegrezza); 215 (Peterson).
- [\[20\]](#) T. 224, 289 (Peterson).
- [\[21\]](#) T. 215-16, 289 (Peterson).
- [\[22\]](#) Tr. 219 (Peterson).
- [\[23\]](#) T. 219, 305-306 (Peterson).
- [\[24\]](#) T. 224, 305-306 (Peterson).
- [\[25\]](#) T. 220-21, 232-33, 289-90, 306 (Peterson); 322-23 (Steele); 194-95 (Allegrezza).
- [\[26\]](#) T. 220-221, 305-307 (Peterson).
- [\[27\]](#) T. 221 (Peterson).
- [\[28\]](#) T. 221-225; 293 (Peterson).
- [\[29\]](#) T. 222-24, 290-92 (Peterson).
- [\[30\]](#) T. 224, 292 (Peterson).
- [\[31\]](#) T. 225-26, 293-94 (Peterson).
- [\[32\]](#) T. 295 (Peterson).
- [\[33\]](#) T. 229 (Peterson).
- [\[34\]](#) T. 230 (Peterson).
- [\[35\]](#) T. 231-232 (Peterson).
- [\[36\]](#) T. 232-233 (Peterson).
- [\[37\]](#) T. 332-23 (Steele).
- [\[38\]](#) T. 313 (Simon).
- [\[39\]](#) T. 39-40 (Simon).
- [\[40\]](#) Ex. 5.
- [\[41\]](#) T. 74 (Simon).
- [\[42\]](#) T. 41 (Simon).
- [\[43\]](#) Ex. 10; T. 40 (Simon).
- [\[44\]](#) T. 41-42 (Simon); 113 (Bollinger).
- [\[45\]](#) Ex. 4; T. 42, 53 (Simon).
- [\[46\]](#) T. 76 (Simon).
- [\[47\]](#) Ex. 4 (Simon).
- [\[48\]](#) Ex. 4.
- [\[49\]](#) T. 75 (Simon); T. 259 (Schneider).
- [\[50\]](#) T. 73 (Simon).
- [\[51\]](#) T. 73 (Simon); T. 259 (Schneider).
- [\[52\]](#) Ex. 5; T. 53, 56 (Simon).
- [\[53\]](#) T. 54, 91 (Simon).
- [\[54\]](#) Compare Exs. 4 and 5.
- [\[55\]](#) Simon Tr. at 89.
- [\[56\]](#) T. 71, 90 (Simon).
- [\[57\]](#) T. 234-235 (Peterson).
- [\[58\]](#) T. 234-235 (Peterson).
- [\[59\]](#) Ex. 18.

- [60] T. 235-36 (Peterson).
- [61] Ex. 25; Ex. 26; Ex. 27; Peterson Tr. at 236; T. 115 (Bollinger); 236.
- [62] Bollinger Tr. at 117.
- [63] Peterson Tr. at 237; Bollinger Tr. at 117.
- [64] T. 118 (Bollinger), 238 (Peterson).
- [65] T. 177 (Hytjen), 197-198 (Allegrezza).
- [66] T. 180 (Hytjen); T. 201 (Allegrezza),
- [67] Ex. 15.
- [68] T. 56-62 (Simon); Since the parties have stipulated that the images came from the hard drives and are pornographic, and because the Licensee believes that the pictures may be prejudicial, Exhibits 6 and 7 have been sealed and were not reviewed by the Administrative Law Judge. Exhibit 8 includes images from one of the sites to which access was denied by the filtering system. T.64 (Simon). It is also sealed and was not reviewed. The actual content of the images is not material.
- [69] Ex. 2; Maurer Tr. at 19; Bollinger Tr. at 122. See Minn. Stat. § 122A.20, subd. 2.
- [70] Ex. 8; Ex. 4; Simon Tr. at 63, 64, 84, 85.
- [71] Ex. 8.
- [72] T. 63-64, 84-85 (Simon).
- [73] Ex. 6; Ex. 7; Ex. 8.
- [74] Ex. 6B.
- [75] Ex. 20; T. 19-22, 27-28 (Maurer).
- [76] T. 28 (Maurer).
- [77] Tr. 72, 314 (Simon).
- [78] T. 28 (Maurer).
- [79] Ex. 10, p. 2.
- [80] T. 253 (Schneider); T. 91-92 (Simon).
- [81] T. 279 (Schneider).
- [82] T. 255 (Schneider).
- [83] T. 256-258 (Schneider).
- [84] T. 259-260, 283-284 (Schneider).
- [85] T. 262-263 (Schneider); T. 91-92 (Simon).
- [86] T. 266 (Schneider).
- [87] T. 274-275 (Schneider).
- [88] T. 275-276 (Schneider).
- [89] T. 48 (Simon).
- [90] T. 284 (Schneider).
- [91] Minn. Stat. § § 122A.20 Subd. 1(a); 214.10; Minn. Stat. § 14.50; Minn. R. § 1400.5010 et seq.
- [92] Minn. Stat. § 122A.20 subd. 1(a)(1).
- [93] Minn. R. § 1400.7300 subp. 5.
- [94] Falgren v. Board of Teaching, 545 N.W. 2d 901, 908 (Minn. 1996).
- [95] Id.
- [96] Webster's New Universal Unabridged Dictionary (2d ed. 1983) cited with favor, Shaw v. Board of Teaching, No. C0-00-2173, 2001 WL 605096 at *1 (Minn. App. June 5, 2001).
- [97] Shaw v. Board of Teaching, supra.
- [98] Liffrig v. Ind't School District #442, 292 N.W.2d 726 (Minn. 1980).
- [99] Tr. 118-119 (Bollinger).
- [100] In re Wang, 441 N.W. 2d 488, 492 (Minn. 1989).
- [101] Ex. 3 (proposed bill and testimony to the Senate Education Committee, March 30, 2001).