

1160-F22596-11/85

IOWA STATE BOARD OF
EDUCATIONAL EXAMINERS

(Cite as I D.P.I. Dec. 202)

In the Matter of

Terry Frankl In Love

Teaching Certificate
Number 183555

PROPOSED DECISION

(Became final November 1, 1985 due to a
failure to appeal or review upon motion.)

Admin. Doc. 806]

The above-captioned matter was heard on August 8, 1985, before a Hearing Panel consisting of Dr. Robert D. Benton, commissioner of public instruction and presiding officer; Mr. David Bechtel, administrative assistant to the commissioner; and Mr. Dwight Carlson, director, School Transportation and Safety Education Division. Dr. David Alvord, consultant, Data Analysis and Statistical Section, served as Advocate. The hearing was held pursuant to Iowa Code section 272A.6 (1985) and departmental rules, Chapter 670--50, Iowa Administrative Code. Neither the Complainant, Mrs. Mary Murphy, nor the Respondent, Terry F. Lowe, was present in person or by counsel. The record reflected that the notice provisions of IAC 670--50.3 were complied with to the Panel's satisfaction; the signature of one Virginia Lowe on a Return Receipt Requested postal form sent to Respondent's last known address evidenced receipt and acknowledgment of notice by an agent of Respondent.

The Iowa Professional Teaching Practices Commission (hereinafter the Commission) found Mr. Lowe in violation of its rules related to professional conduct and recommended that a hearing be conducted by the State Board of Educational Examiners, (hereinafter the Board) and that at the conclusion thereof, the Board suspend Respondent's teacher's certificate.

1.
Findings of Fact

The Hearing Panel finds that it and the State Board of Educational Examiners have jurisdiction over the parties and the subject matter before them.

This hearing was held as a result of a recommendation filed by the Commission, IAC 640--2.10(3)(d)(3). Pursuant to departmental rules, IAC, 670--50.11, absent a showing that the parties did not have a full and fair opportunity to present evidence to the Commission, the Hearing Panel is bound by the factual findings of the Commission. No such showing was raised or made in this case. The following facts represent a summary of the evidence before the Commission.

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Respondent Terry Lowe was at all relevant times the holder of a valid Iowa teacher's certificate, folder number 183555, which authorized him to teach social studies and physical education and to coach athletics. Mr. Lowe was employed by the Seneca Community School District as a teacher and coach for six years in the Junior-senior high school. "By all accounts, Mr. Lowe was an extremely popular teacher" and sometime confidante for several adolescent female students whom he taught. Mary Murphy v. Terry Lowe, Case No. 84-2, [Commission] Hearing Decision, at page 1 (4/29/85).

The Complainant below, Mary Murphy, is the mother of [redacted], a former student of Mr. Lowe's at Seneca. She filed the complaint on February 3, 1985, on behalf of her daughter when she became aware of allegations made by [redacted] against Mr. Lowe. The allegations ranged from off-color, sexual remarks made to [redacted] and others, to touching of the girls' legs, inner thighs, and groin and breast areas during and outside of school, to an accusation of sexual intercourse between [redacted] and Lowe.

Following an investigation by the Commission into the allegations (see IAC 640--2.5), and upon recommendation that probable cause existed warranting further proceedings, a formal hearing was held on November 9, 1984. Both Complainant and Respondent were represented by counsel. Several witnesses gave testimony, including former students, some then graduated, of Mr. Lowe's; a fellow teacher; and the principal under whom Lowe had taught. [redacted] presented the allegations against Respondent, and Lowe himself testified, categorically denying the grover of the charges.

The former students, including [redacted], told of their one-time admiration, respect and fondness for Mr. Lowe, and how they had assisted him with grading papers, helped coordinate athletic activities, and sought his advice and counsel. Several related instances of off-color remarks (e.g., inquiries about their "sex lives," and comments about the development of their adolescent bodies). Additionally, several witnesses recounted having been touched or fondled by Mr. Lowe, from pats on the buttocks to groping of the thigh and groin areas of the girls.

[redacted] testified, relating (in the words of the Commission) "a rather bizarre story where she stated she and Mr. Lowe actually had sexual intercourse in her parents' home when both of them were at work." Murphy v. Lowe, 84-2 at p. 4. The allegation of intercourse was in addition to allegations of improper touching of the legs, an attempt to touch her breasts inside her blouse, kissing, and "mutual" fondling of genitalia at the apartment of one Mr. Bright, another teacher at Seneca.

Mr. Bright testified that Lowe had asked to use Bright's apartment to change clothes, relax and watch television before practices, but was not aware of whether Lowe had ever so used the apartment. A Mrs. Edgington stated under oath that she had seen Mr. Lowe and [redacted] go to Bright's apartment on one occasion, staying for approximately one-half hour.

Mr. Lowe acknowledged that although he might have made some sexual innuendo on occasion directed to the girls, he vehemently denied the allegations of improper touching, taking [redacted] to Bright's

apartment, and having sex with her. He stated that he was aware of the rumors as they surfaced, and denied them to his principal, John Legg, when questioned by him. When the rumors continued, however, he chose to resign, due to the unrest at the school and in the interest of his family, at the close of the 1983 school year. He now works in the private sector.

Mr. Legg also testified at the hearing. He told of having heard the rumors and conducting an investigation, at which time he was told by several of the girls that they had "made that up." Mr. Lowe, however, had admitted to Legg of having made certain remarks and having touched the girls in ways that could have been misinterpreted.

The Commission was confronted with a difficult decision to make, in light of the contradictory testimony. At such times, credibility is undoubtedly a factor. It is important to note that the Commission specifically discounted [redacted] charge of statutory rape. *Id.* at p. 4. Nevertheless, the Commission did find sufficient the testimony from the several witnesses who stated they had been touched or fondled. "The Commission specifically finds that Respondent entered into inappropriate physical touching with adolescent female students . . . in violation of this Commission's rules and criteria." *Id.* Said rules and criteria were set forth as follows:

Iowa Administrative Code, Professional Teaching Practices Commission, Rule 640--3, specifically provides:

3.1(1)a. . . . A violation of any of the school laws of Iowa constitutes a violation of the criteria of the [Commission].

3.2(1)(c) Sexual involvement with a minor student with the intent to commit or the commission of the acts and practices proscribed by the following provisions of the Criminal Code of Iowa: Sections 709.2--709.4, 709.8, 725.1--725.3.

3.3(1)(c) Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.

Professional Teaching Practices Commission Rule 670--3, IAC.

The Commission's recommendation to the Board was that Respondent's teacher's certificate be suspended through June 30, 1988, "with the stipulation that if Respondent wishes to have his certificate reinstated prior to that time, that he must appear before the Board to demonstrate his fitness to be an instructor." *Murphy v. Lowe*, 84-2, at p. 5.

II.

Conclusions of Law

Departmental Rule 670--50.11, IAC, provides the scope of review of findings of fact involving recommendations of the Commission. That rule

reads as follows:

670--50.11 Rules of evidence--recommendation. In hearings involving recommendations, the hearing panel will consider itself bound by the factual findings of the commission and will not receive evidence on any issue upon which the parties had a full and fair opportunity to present evidence to the commission, unless the panel finds that the interests of justice require relaxing the principle of res judicata. The burden of establishing that the issue was not fully and fairly explored before the commission or that the interests of justice require consideration of additional evidence shall be upon the proponent of the evidence.

There being no evidence in the record that would indicate a full and fair opportunity to present evidence did not occur, the Hearing Panel is precluded from reconsidering the factual findings of the Commission. Therefore, the Panel has found that Mr. Lowe violated criteria of professional conduct established by the Commission, for which he is subject to suspension of his Iowa teacher's certificate under Chapter 272A.6 of the Iowa Code.

III.
Decision

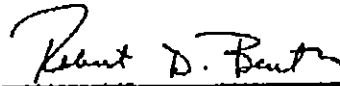
The Hearing Panel finds that the Iowa teacher's certificate held by Terry F. Lowe shall be suspended until June 30, 1988. In so doing, the Panel rejects that portion of the Commission's recommendation which would allow for reinstatement prior to 1988. Existing rules do not allow for a procedure affording a balanced inquiry into moral fitness. Further, the Board lacks the necessary expertise and qualifications to evaluate a change in moral stature. Cf. In re Richard Shockey, 1 D.P.I. Dec. 183 (1985).

IV.
Note on Finality of Decision

This decision shall become final if not reviewed on the motion of or appealed to the State Board of Educational Examiners within thirty (30) days of the issuance of this proposed decision.

October 1, 1985

DATE



ROBERT D. BENTON, Ed.D.
COMMISSIONER OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER