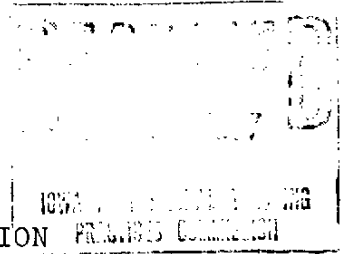


NOTE:

The allegations and decision in this case fall under old rules. It has been classified under the most relevant of the current code sections and subsections.



IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION

NORA SPRINGS-ROCK FALLS	:	
COMMUNITY SCHOOL DISTRICT,	:	
Complainant,	:	CASE NO. 86-27
v.	:	<i>#195355</i>
RICHARD JON KRUEGER,	:	RULING
Respondent.	:	

This matter came before the Commission on the parties' Application for Approval of Settlement Agreement which had previously been filed. Subsequent thereto, the Commission, through counsel, had advised the parties of their concerns as to whether or not it was appropriate to ratify the proposed agreement and so advised counsel. Thereafter the matter was formally set for hearing on the merits on or about November 20, 1987 and counsel were afforded an opportunity to orally present their Application for Settlement Agreement on November 19, 1987.

After the matter was set for hearing, counsel filed a Response to Hearing Notice and Joint Request for Continuance on November 13, 1987 asserting that a pending Motion to Dismiss had not been ruled on by the Commission and further adding that because of the proposed Settlement Agreement the matter had been resolved at the local level and thus the matter should be, in the alternative, dismissed.

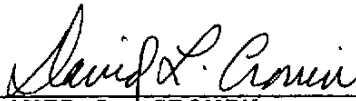
Counsel for Respondent appeared before the Commission on November 19 and argued that under the statutory scheme of administrative law set forth in Chapter 17A, the Code, Chapter 272A, this Commission's enabling legislation, and Chapter 640-1.1(272A) and et. seq., this Commission was obliged to accept the Agreement and forward it to the State Board of Educational Examiners with either a recommendation that it be accepted in its entirety or that it be forwarded to the State Board of Educational Examiners with no recommendation. The crux of counsel's argument is that this is true notwithstanding that a probable cause determination has been previously made by the Commission. Thus, it is urged that where the parties, by agreement, resolve their differences between themselves and agree to a specific term of suspension of a certified teaching certificate, that the Commission is without authority at that point regarding any aspect of the dispute. In essence, this Commission's role in the review of professional practices and the appropriateness of a specific sanction is thus limited by the parties' settlement agreement.

After hearing the arguments and having reviewed the Settlement Agreement in light of the statutes of the State of Iowa which govern these proceedings as well as the administrative rules that govern these proceedings, we conclude we are not required to accept the proposed Settlement Agreement. That under the statute and rules we conclude that after probable cause has been determined, this Commission has the discretion whether or not to accept or reject a proposed agreement tendered to it by private litigants. In the exercise of its discretion, the Commission rejects the proposed Settlement Agreement.

After reviewing the Motion to Dismiss filed on April 8, 1987 by Respondent and held in abeyance pending an approved settlement of this matter by the Commission, the Commission now overrules the Motion in its entirety.

In light of the procedural presentation of this matter in the interest of fairness to the parties, the Joint Motion for Continuance filed on or about November 13, 1987 is sustained. The matter is herein rescheduled for formal hearing on the merits on or about January 21, 1988 in the Grimes State Office Building, Des Moines, Iowa. A separate Amended Hearing Notice will be filed forthwith regarding this new hearing date.

Dated this 20 day of November, 1987.



DAVID L. CRONIN
Commission Chairperson

2-23-89

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

RICHARD JON KRUEGER,)	
)	
Petitioner,)	NO. AA 5-1283
)	
vs.)	
)	
IOWA PROFESSIONAL TEACHING)	RULING
PRACTICES COMMISSION,)	
)	
Respondent.)	

A hearing on the Petition for Judicial Review was held before this Court. The Petitioner, Richard Jon Krueger, appeared by his attorney, Becky S. Knutson, and the Respondent, Iowa Professional Teaching Practices Commission, appeared by their attorney, David L. Brown. The Court, having heard arguments from counsel and having examined the file, including briefs of the attorneys, finds as follows:

FINDINGS OF FACT

1. A complaint against the Petitioner, Richard Jon Krueger, was filed with the Respondent, Iowa Professional Teaching Practices Commission, on December 12, 1986. An investigator was assigned to the case, and a hearing notice was sent on February 18, 1987, by the Respondent. The complainant, Nora Springs-Rock Falls Community School District and Richard Jon Krueger, individually and jointly, requested and obtained continuances of the hearing. Richard Jon Krueger filed a Motion to Dismiss on April 8, 1987.

2. Before a hearing was held, the complainant, Nora Springs-Rock Falls Community School District and Richard Jon Krueger signed a settlement agreement. An Application for Settlement Agreement was filed with the commissioner, and on November 19, 1987, counsel for the Respondent appeared before the commission. She told the commission it was obligated to accept the agreement

and forward it to the State Board of Educational Examiners with either a recommendation to accept it or with no recommendation.

3. The commission in its ruling dated November 20, 1987, rejected the proposed settlement agreement, overruled the motion to dismiss, and rescheduled the formal hearing on the merits to January 21, 1988.

4. The commission said in its ruling dated November 20, 1987, the following:

"After hearing the arguments and having reviewed the settlement agreement in light of the statutes of the State of Iowa which govern these proceedings as well as the administrative rules that govern these proceedings, we conclude we are not required to accept the proposed settlement agreement."

5. On December 18, 1987, the Petitioner's Petition for Judicial Review was filed in this court. In the Petition the Petitioner asks that the Court reverse the ruling of the Iowa Professional Teaching Practices Commission dated November 20, 1987, and specifically order the commission to allow the parties to voluntarily resolve the contested case pursuant to the terms of their settlement agreement.

CONCLUSIONS OF LAW

Richard Jon Krueger has brought to the Court's attention Iowa Code Section 17A.1(1) which states:

"Unless precluded by statute, informal settlements of controversies that may culminate in contested case proceedings according to the provisions of this chapter are encouraged. Agencies shall prescribe by rules specific procedures for attempting such informal settlements prior to the commencement of contested case proceedings. This subsection shall not be construed as to require either party to such a controversy or utilize the informal procedures or to settle the controversy pursuant to those informal procedures."

Petitioner also sets forth in his brief Section 17A.12(5) which states:

"Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default or by another method agreed upon by the parties in writing."

The Petitioner maintains that since Chapter 17A authorizes parties to settle any contested case in the absence of any contrary or conflicting statute or case law, the commission has exceeded its authority in rejecting the parties' voluntary settlement.

The Petitioner went on to say in his brief that under the rules of the commission set forth in Chapter 640 of the Iowa Administrative Code, now Chapter 287 of the Iowa Administrative Code, the commission chairperson or director is ordered to make a determination as to the possibility of an informal settlement conference between the parties.

The Respondent in its brief maintains that the Iowa Code has granted the commission the authority to accept informal settlements or controversies but does not require that informal settlements be accepted.

In response to the Petitioner's argument that the complainant could withdraw its complaint, the Respondent herein quotes from the Iowa Administrative Code, Section 640-2.1(4), now 287-2.4(4), where it states:

"A complaint or any specification thereof may be amended or withdrawn by the complainant at any time prior to notification of the respondent, and thereafter at sole discretion of the commission."

In this case the investigation had lead to the finding of probable cause of misconduct by the Petitioner and the Respondent had been notified.

The complainant stated in the complaint:

"Richard Jon Krueger had sexual conduct with and toward a minor student in the Nora Springs-Rock Falls Community School in violation of Section 640-3.2(272A)."

It is the duty of the Iowa Professional Teaching Practices Commission to investigate and determine the consequences. There appears to be no statutory duty imposed upon the commission to accept a settlement agreement and/or dismissal after notification. If the Commission had to follow the Petitioner's theory, it would be restricted in its ability to collect all of the facts and determine the truth of the claim and authority to protect the integrity of the teaching profession.

Section 272A.6 of the 1987 Code of Iowa states:

"The commission shall have the responsibility of developing criteria of professional practices including, but not limited to . . . competent performance of all members of the teaching profession . . . A violation is determined by the commission following a hearing of any of the criteria so adopted shall be deemed to be unprofessional practice and a legal basis for the suspension or revocation of a certificate by the State Board of Educational Examiners.

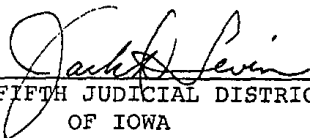
The commission, in administrating its responsibilities under this chapter, after a hearing, shall exonerate, warn or reprimand the member of the profession or may recommend the holding of a certification suspension or revocation hearing by the State Board of Educational Examiners."

The Court concludes that the language of the statutes cited by the Petitioner is not mandatory. The Respondent does and should have the authority to accept or reject a settlement agreement. Because of the severity of the complaint, this is definitely a case where the Respondent would not accept a settlement. Therefore, the request made by the Petitioner, in the Petition for Judicial Review should be denied.

RULING

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Petitioner's request made in his Petition for Judicial Review is
DENIED, and the case is remanded to the Respondent for further
proceedings.

Dated this 21st day of February, 1989.



JUDGE, FIFTH JUDICIAL DISTRICT
OF IOWA

COPIES TO:

Becky S. Knutson
718 Equitable Building
Des Moines, Iowa 50309

ATTORNEY FOR PETITIONER

✓ David L. Brown
8th Floor - Fleming Building
Des Moines, Iowa 50309

ATTORNEY FOR RESPONDENT

counsel appeared before the Commission to present the proposal. After having reviewed the proposal, the Commission concluded they were not required to accept it and thereafter rejected same, overruled a Motion to Dismiss which had been filed by the Respondent and rescheduled the matter for hearing on the merits in January, 1988.

4. That thereafter the Respondent filed a Petition for Judicial Review to the District Court seeking to have the Iowa Professional Teaching Practices Commission Order set aside. On February 21, 1989 specifically holding in pertinent part "it is the duty of the Iowa Professional Teaching Practices Commission to investigate and determine consequences. There appears to be no statutory duty imposed upon the Commission to accept a settlement agreement and/or dismissal after notification. If the Commission had to follow the Complainant's theory, it would be restricted in its ability to collect all of the facts and determine the truth of the claim and authority to protect the integrity of the teaching profession".

5. Subsequently, the Iowa Professional Teaching Practices Commission set the matter for hearing at a future date. Before the Commission was able to set the matter for evidentiary hearing, the Iowa Legislature amended the enabling legislation of the Iowa Professional Teaching Practices Commission in such a manner that that Commission ceased to further exist. However, as of July 1, 1989, the legislature created this Board, that being the Iowa Board of Educational Examiners. After having reviewed this file, this Board entered its Order for the parties to show cause why the matter should not be set for hearing. By way of response, the School District by separate correspondence indicated an interest in dismissing the Complaint although issues raised contain serious allegations of sexual contact with and toward a minor. Counsel for Respondent sought to withdraw from the case and an Order was entered permitting this withdrawal. After the matter was again set for contested hearing, this Board received an answer from Mr. Krueger filed August 2, 1990 which stated in pertinent part: "I will not be attending the hearing, will not be represented and will offer no witnesses. My teaching certificate has expired and I do not intend to try to renew it. I have no desire to subject my family to this four and one-half years after we have put our lives back together".

6. The allegations previously made by the School District have never been placed in issue by the Respondent. The fact the School District, after probable cause has been found, chooses not to appear and that Respondent now claims that his certificate, which was in force when the Complaint was filed some years ago, is not now in force after a series of procedural motions delayed the case considerably, do not prevent this Board from exercising jurisdiction and ultimately addressing the merits of the case.

7. After reviewing the Complaint, responses filed by counsel as well as Respondent himself finds substantial evidence supporting the Complaint and finds that Respondent by his conduct violated specific criteria relating to professionalism and actions toward minors.

8. The panel further finds that under the uncontradicted allegations, the appropriate sanction which should be entered is revocation with no possibility of reinstatement.

CONCLUSIONS OF LAW

1. The panel concludes that it has jurisdiction of the subject matter.

2. The panel concludes after service of the Notice of Hearing was made on Respondent and upon receipt of an Answer filed by him before this Board, that it has personal jurisdiction of Respondent.


3. The panel concludes that the substantial evidence supporting the allegations of sexual conduct with and toward a minor student in the Nora Springs-Rock Falls District.

4. The panel further concludes that the conduct is in contravention of our enabling legislation and rules of practice and that the appropriate sanction herein is revocation with no possibility of reinstatement.

DECREE

It is therefore recommended to the entire Board of Educational Examiners that the teaching certificate of Respondent, Richard Jon Krueger, certificate number 195355, be hereby permanently revoked with no possibility of reissuance or reinstatement.

Dated this 5 day of October, 1990


CALVIN HALLIBURTON
Chairperson