

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.

ORIGINAL

IOWA BOARD OF EDUCATIONAL EXAMINERS

JAMES DOWDLE	:	
DOWLING HIGH SCHOOL	:	
Complainant,	:	CASE NO. 97-10
	:	
AND	:	
	:	LICENSE NO. 322636
SEAN BERG	:	
	:	
Respondent.	:	ORDER

The Complaint was filed with the Board of Educational Examiners on June 27, 1997. Subsequently, an investigation was completed. An evidentiary hearing was held before an Administrative Law Judge representing the Board of Educational Examiners, and a Proposed Decision was rendered.

After having reviewed the Proposed Decision, the Board accepts the decision of the Administrative Law Judge, striking the sanction, "shall be revoked, with no possibility for reinstatement without proof of counselor or some other demonstrable form of rehabilitation." and inserting, in lieu, thereof, the following sanction: "shall be suspended for a period of ten years with the consideration of reinstatement after evidence of successful counseling by a licensed health professional."

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the teacher's license of Mr. Sean Berg shall be suspended for a period of ten years with the consideration of reinstatement after evidence of successful counseling by a licensed health professional.

Dated this 5th day of May, 1998.

Judith Brueggeman Ley Alkhus
JUDITH BRUEGGE MAN, VICE-CHAIRPERSON

Original filed on May 5, 1998 at the office of the Board of Educational Examiners.

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BOARD OF EDUCATIONAL
EXAMINERS

JAMES DOWDLE)
DOWLING HIGH SCHOOL) CASE NO. 97-10
) DIA NO. 98BEE001
Complainant,)
)
AND)
) PROPOSED DECISION
SEAN BERG)
)
Respondent)
)
License No. 322636)

This matter came on for hearing before the undersigned administrative law judge on February 9, 1998 at 9:00 a.m. in the Lucas State Office Building, Second Floor, Hearing Room A, Des Moines, Iowa. The Complainant appeared and was represented by James Dowdle. Also present was Luvern Gubbels, Superintendent for the Des Moines Diocese. The Respondent, Sean Berg, did not appear. The hearing was tape recorded.

The Complaint was amended to correct the citations to the Iowa Administrative Code. The correct citations are 282 IAC 12.2(1)"c" and 12.3(1)"c", "d", and "f".

A proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party to the decision who is adversely affected. An appeal is commenced by serving on the board's chair, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision or order on the appealing party.

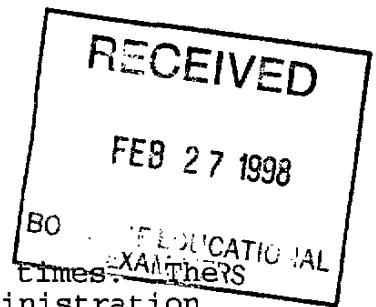
THE RECORD

The record includes the Complaint filed 6/27/97; the Board's letter to the parties, dated 6/27/97; the Hearing Notice; Proof of Service; Board's Order Extending Time, issued 12/10/97; Answer, filed 1/21/98; Respondent's Letter dated 1/19/98; the testimony of the witness, and the following exhibit:

Complainant Exhibit A: Memo (Dowdle to Gubbels)

FINDINGS OF FACT

1. During the 1996-1997 school year, the Respondent was employed by Dowling High School as a teacher-general music/choral director. (Testimony of James Dowdle; Complaint)
2. In June 1997, a parent observed the Respondent and a female high school student engaged in a passionate embrace and observed



the Respondent kiss the student on the lips numerous times. The parent reported these observations to school administration. (Testimony of James Dowdle; Complaint)

3. A Level I investigation was conducted, and probable cause was found. The Respondent decided to resign before the Level II investigation was conducted. The Respondent admitted kissing the student on the lips while engaging in a passionate embrace. (Testimony of James Dowdle; Complaint)

4. In his Answer, the Respondent admitted having a "relationship" with the student. The Complainant had alleged that the relationship started when the student was seventeen years old and continued after she turned eighteen. In his Answer, the Respondent states that the relationship with the student began in February 1997, and the student had turned eighteen in January. No additional evidence as to when the relationship commenced or the age of the student was introduced into this record. (Testimony of James Dowdle; Complaint; Answer)

5. The Respondent denied that his relationship with the student was sexual. He admitted that he became emotionally attached to the student and shared stories and "private counsel." The Respondent stated that he was working long hours at the school, away from his private life and home, and allowed himself to cross a "delicate line." He also stated that he was sorry for his actions and believed that taking himself out of the situation was for the best. He asked for the opportunity to return to teaching someday without a scar on his record. (Answer)

6. On August 28, 1997 at 2:32 p.m., the Respondent called a Dowling High School employee and left a message on that employee's voice mail. The Respondent provided his telephone number in New York and asked the employee to give a message to a particular female student to call him. The Respondent indicated that the message should be secret. In addition, the Respondent has contacted or attempted to contact other Dowling High School students. (Testimony of James Dowdle; Complainant Exhibit A)

7. The Respondent has moved to New York. The Hearing Notice was served on him by certified mail on January 2, 1998. In a letter dated January 19, 1998, the Respondent stated that he would not be able to attend the hearing on February 9, 1998. He asked the Board to have a kind heart and forgive his mistake and allow him to keep his teaching license in the future. (Proof of Service; Respondent Letter dated 1/19/98)

CONCLUSIONS OF LAW

1. The legislature created the Iowa Board of Educational Examiners with the exclusive authority to develop a code of

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professional rights and responsibilities, practice, and ethics. Iowa Code section 272.2(1) (1997).

2. The Board has promulgated procedural rules at 282 IAC chapter 11. Pursuant to 282 IAC 11.8(1), the notice of hearing must be sent by certified mail with return receipt. The Respondent was properly served with notice of hearing in this case but did not appear. Pursuant to Iowa Code section 17A.12(3), he is bound by this proposed decision to the same extent as if he had appeared.

3. 282 Iowa Administrative Code 12.2(1) "c" provides:

282-12.2(272) Conviction of crimes, sexual and other immoral conduct with or toward students and alcohol or drug abuse.

12.2(1) It is hereby deemed unprofessional and in violation of the criteria of this board for a member of the teaching profession to be guilty of any of the following acts or offenses:

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 to 709.4, 709.8, 725.1 to 725.3, and 728.12(1).

4. 282 IAC 12.3(1) "c", "d", and "f" provide:

282-12.3(272) Ethical practice toward other members of the profession, parents, students and the community.

12.3(1) Principle I-commitment to the student. The educator measures success by the progress of each student toward realization of potential as a worthy and effective citizen. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. In fulfilling obligations to the student, the educator:

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

d. Shall conduct professional business in such a way that the educator does not expose the student to unnecessary embarrassment or disparagement.

...
f. Shall not use professional relationships with students for private advantage.

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5. Based on this record, it cannot be concluded, by a preponderance of evidence, that the Respondent has violated 282 IAC 12.2(1)"c". Given the hearsay nature of the evidence, it is unclear whether the student was still a minor when the relationship commenced. It is also unknown whether the relationship had in fact become sexual, as that term is defined by references to specific sections of the Iowa Criminal Code. However, given the nature of the physical contact observed by the parent and admitted by the Respondent, it appears very likely that his intent was sexual in nature.

The preponderance of the evidence clearly established that the Respondent has violated 282 IAC 12.3(1)"c", "d" and "f". By entering into an intimate personal and physical relationship with a female student, the Respondent failed to make reasonable efforts to protect the student from conditions harmful to learning and health and safety. The Respondent failed to conduct his professional business in such a way that he did not expose the student to unnecessary embarrassment or disparagement. Finally, the Respondent used his professional relationship with this student for private advantage, i.e. to satisfy his own emotional and physical needs.

The Respondent admits that he became emotionally attached to the student and allowed himself to cross a "delicate line." Even if the relationship had not become sexual, it was inappropriately physically intimate, as witnessed by a parent at the school. The Respondent admitted kissing the student on the lips while engaged in a passionate embrace. Sexual intent can reasonably be inferred from this behavior. This is a very serious breach of professional ethics, regardless of whether the student was seventeen or eighteen or whether the relationship had become sexual prior to its discovery by school administration.

In his letter to the Board, the Respondent states that he was sorry and felt it was best to take himself out of the situation. However, the Respondent continued to attempt to contact students, including at least one female student, at Dowling High School. The Respondent asks to be able to return to teaching someday without a scar on his record. It does not appear that the Respondent appreciates the seriousness of his ethical breach or the appropriate boundaries between teacher and student.

ORDER

IT IS THEREFORE ORDERED, that if this Proposed Decision becomes a final decision, that the Respondent's license, #322636, shall be REVOKED, with no possibility for reinstatement without proof of counseling or some other demonstrable form of rehabilitation.

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Dated this 27th day of February, 1998.



Margaret LaMarche
Administrative Law Judge
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