

**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.

*Tape in file*

IOWA BOARD OF EDUCATIONAL EXAMINERS

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PEGGY WRIGHT	:	
	:	CASE NO. 98-15
Complainant,	:	
	:	
AND	:	
	:	LICENSE NO. 328888
JAMES V. BROWN	:	
	:	
Respondent.	:	ORDER

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The Complaint was filed with the Board of Educational Examiners. 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 proposed decision, in all particulars, and so issues a final decision in this matter.

ORDER

IT IS, THEREFORE, ORDERED that the Respondent's Iowa teacher's license be permanently revoked with no possibility of reissuance or reinstatement.

The Board accepts the proposed decision as the Board's final decision in this matter.

Dated this 6<sup>th</sup> day of March, 2000.

*Judith Brueggeman, AK*  
JUDITH BRUEGGEMAN, VICE-CHAIRPERSON

Original filed on March 6, 2000 at the office of the Board of Educational Examiners.

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PEGGY WRIGHT,

Complainant,

AND

JAMES V. BROWN

Respondent

)  
) CASE NO. 98-15  
) DIA NO. 99BEE007  
)

) LICENSE NO. 328888  
)

) PROPOSED DECISION  
)  
)

BOARD OF EDUCATIONAL  
EXAMINERS

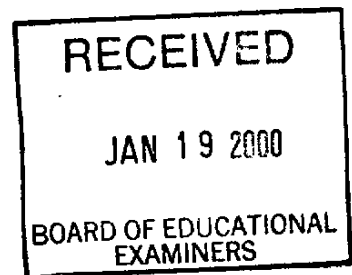
This matter came on for hearing by telephone conference call before the undersigned administrative law judge on December 16, 1999 at 9:00 a.m. The Complainant, Peggy Wright, appeared without counsel. The Respondent, James V. Brown, appeared without counsel. The hearing was tape recorded.

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 a notice of appeal on the board's chair, either in person or by certified mail, within 30 days after service of the proposed decision or order on the appealing party.

THE RECORD

The record includes the Complaint filed 6/30/98; the Board's letters to the parties, dated 8/7/98; the Order extending the 180 day time period, issued 12/9/98; the Hearing Notice; Proof of Service; Respondent's Request for Continuance, 11/11/99; Respondent's Notice of Intent to Participate and Motion to Dismiss, 11/16/99; Denial of Continuance Request, 11/17/99; the Answer, filed 11/19/99; Respondent's Request for Information, 11/26/99; Complainant Letter dated 11/26/99 and attached exhibits; Second Motion To Dismiss and Request For Reconsideration of Continuance, 11/30/99; the Board's Response To Request For Information, 12/8/99; testimony of the witnesses; and the following exhibits:

- Complainant Exhibit A: Attachment A to Complaint, Narrative of Peggy Wright
- Complainant Exhibit B: Nine newspaper articles regarding criminal charges against Respondent, 5/22/98-10/30/98
- Complainant Exhibit C: Child Protective Assessment Summary Part A



FINDINGS OF FACT

1. The Respondent is a licensed teacher in the state of Iowa. The Respondent was employed by the Central City School District as an instrumental music instructor during the 1996-1997 and the 1997-1998 school years. (Testimony of Complainant; Respondent; Complainant Exhibits A, B)

2. During the summer of 1997, the Complainant hired the Respondent to provide day care for her nine year old son, BC, who was a special education student at Hiawatha Elementary School in the Cedar Rapids School District. The Complainant checked the Respondent's references with the principal and a co-worker at the Central City School District prior to hiring him. The Respondent usually cared for BC at the Respondent's apartment. The Respondent provided day care for BC from mid-June 1997 until school started and on one occasion during Thanksgiving break. (Testimony of Complainant; Respondent; Complainant Exhibit A, C)

3. The Complainant testified that she also hired the Respondent to provide tutoring for her son and that he was paid extra money for tutoring. The Respondent denies that he was hired to provide tutoring or that he was ever paid for tutoring. The Respondent was paid for his services in part by a block grant through the Department of Human Services. The original Complaint and the Child Protective Summary prepared by DHS do not mention that the Respondent provided tutoring for BC. Based on this record, it cannot be concluded that the Respondent was hired to tutor BC. However, the Complainant considered the fact that the Respondent was a licensed teacher in her decision to hire him. (Testimony of Complainant; Respondent; Complainant Exhibits A, C)

4. On May 15, 1998, BC reported to his mother that it hurt when he "went poop." BC told his mother that he did not want to go back to the Respondent's for day care during the upcoming summer. When his mother asked him why, BC told her that the Respondent looked at "bad" pictures and BC described pictures from the Internet with two men having oral sex. BC also reported that the Respondent had made BC touch his "thing" and that the Respondent had touched BC while playing games. BC also told his mother that the Respondent got on top of him while he was on the bed playing with the joystick from the Respondent's computer, and further described anal penetration by the Respondent. BC told his mother that the Respondent would be very angry that he told her. (Testimony of Complainant; Complainant Exhibits A, C)

5. The Complainant reported this information to the Department of Human Services (DHS). DHS interviewed the Complainant and scheduled BC for an appointment at the Child Protection Center, where he was examined by a physician and interviewed.

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a) The physician reported physical findings in her genital examination consistent with what BC reported. She noted a skin tag at the 6:00 position in his rectal area which was unusual and "probably a scar." She further noted that it was possible that a white discoloration observed at the 5:00 position was the residual of an old scar.

b) The interviewer followed protocol to determine BC's level of functioning and to build rapport. BC reported that the Respondent rubbed his penis, and he rubbed the Respondent's penis. BC also reported that the Respondent put his penis in BC's mouth and in his buttock area. BC reported that this occurred both at the Respondent's home and at BC's home. BC also reported that he had seen pictures of naked men together on the Internet on Respondent's computer.

DHS completed a Child Protective Assessment Summary Part A, determined that BC was credible, founded a report of child abuse, and placed the Respondent's name on the Central Abuse Registry. (Testimony of Complainant; Complainant Exhibit C)

6. This information was also reported to the Marion Police Department, and criminal charges of Sexual Abuse in the Second Degree, in violation of Iowa Code section 709.3, were filed against the Respondent. A search warrant was executed at the Respondent's apartment, and the police seized his computer and 82 floppy discs. The floppy discs contained 233 images of nude men, some committing sex acts. The Respondent was found guilty of Sexual Abuse in the Second Degree following a jury trial. He is currently incarcerated at the Iowa Medical and Classification Center at Oakdale, Iowa. The Respondent is appealing his conviction. (Testimony of Complainant; Respondent; Complainant Exhibits A, B)

#### CONCLUSIONS OF LAW

##### I. First Motion To Dismiss

On November 19, 1999, the Respondent filed a Motion to Dismiss the Complaint in this case, pursuant to 282 IAC 11.4, on the ground that the Complainant is not a proper person to file the Complaint in this matter. Ruling on this Motion To Dismiss was reserved, with the understanding that it would be ruled upon in the Proposed Decision.

At the outset, it should be noted that 282 IAC 11.4 is not jurisdictional. The jurisdictional requirements for a complaint are found at 282 IAC 11.3 and are satisfied in this case.

282 IAC 11.4(1) provides, in relevant part:

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**282-11.4(272) The complaint**

**11.4(1) Who may initiate.**

- a. Licensed practitioners employed by a school district or their education entity or their recognized local or state professional organization.
- b. Local boards of education.
- c. Parents or guardians of students involved in the alleged complaint.

In this case, the Board accepted the Complaint filed by the Complainant, mother of BC, and assigned the Complaint for investigation.

The Respondent contends that the Complainant is ineligible to file the complaint under all three of the categories listed above. With respect to 282 IAC 11.4(1)"c", the Respondent points out that the alleged victim was never his student, and that the Complainant is not a parent or guardian of any of the Respondent's former students. However, at the times relevant to the Complaint, BC was enrolled as a student at another school district.

While it is possible to interpret 282 IAC 11.4(1)"c" in a restrictive manner to limit the right to file a complaint to parents of the Respondent's own students, the rule does not say that. If the Board interpreted this rule to include such a limitation, then a parent would also be precluded from bringing a complaint against a teacher in their child's school, unless their child was a student in the teacher's class.

The Board's rules clearly serve the remedial purpose of protecting students and should be given a broad, rather than a restrictive interpretation. The Complainant, who is the mother of the student who was involved in the alleged complaint, should be entitled to file the complaint. The Motion to Dismiss is DENIED.

**II. Second Motion To Dismiss**

The Respondent filed a second Motion to Dismiss which asserted that the Complaint should be dismissed because the Complainant violated the prohibition on ex parte communication, found at 282 IAC 11.16(2), when she initiated media coverage of this case. The Respondent contends that through the media, the Complainant has sought to influence the Board. This Motion to Dismiss was denied in an oral order at the outset of the hearing.

As stated in the hearing record, the only media coverage which has been seen or heard by the undersigned administrative law judge are the newspaper articles that make up the Complainant's Exhibit B. The Respondent received copies of these articles and was allowed to respond on the record. They do not constitute ex parte communications.

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### III. The Violations

The legislature created the Iowa Board of Educational Examiners with the exclusive authority to develop a code of professional rights and responsibilities, practice, and ethics. Iowa Code section 272.2(1)(1997).

The governing criteria of professional practice applicable to this case and cited by the Complainant are found at 282 IAC 12.2(1) "b" and "c":

**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:

...

b. The commission of or conviction for a public offense as defined by the Criminal Code of Iowa, provided that the offense is relevant to and affects teaching or administrative performance.

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).

The preponderance of the evidence established that the Respondent has violated 282 IAC 12.2(1) "b" and "c" when he committed acts of sexual abuse against BC, a nine year old student. The Respondent was criminally charged and found guilty by a jury of Sexual Abuse in the Second Degree, in violation of Iowa Code section 709.3. In addition, the Department of Human Services conducted its own investigation. A physician examined BC and concluded there were physical findings consistent with what BC reported to have occurred. DHS interviewed BC, his mother, and the Respondent and concluded that the allegation of sexual abuse against the Respondent was confirmed and founded. The Respondent's name has been placed on the Central Abuse Registry.


### ORDER

IT IS THEREFORE ORDERED, that if this proposed decision becomes the final decision, that License No. 328888, issued to James V. Brown, shall be REVOKED.

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Dated this 19<sup>th</sup> day of January, 2000.



Margaret LaMarche  
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