

**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 BOARD OF EDUCATIONAL EXAMINERS

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NATALIE AND CHARLES SHEA	)	DIA NO. 01BEE015
(Parents)	)	CASE NO. 01-12
	)	
Complainant	)	License No. 132546
and	)	
	)	
	)	RULINGS:
DR. STEPHEN D. REGAN	)	MOTION FOR SUBSTITUTION OF PARTY;
	)	MOTION FOR CONSOLIDATION;
Respondent.	)	MOTION TO DISMISS;
	)	MOTION TO RECONSIDER APPOINTMENT
	)	OF ADMINISTRATIVE LAW JUDGE;
	)	MOTION FOR SPECIFIC STATEMENT

On November 9, 2001, the Iowa Board of Educational Examiners issued an Order Granting Continuance in the above-captioned disciplinary proceeding and delegated ruling on the pending motions to the undersigned administrative law judge.

Motion For Substitution of Party and Consolidation

On October 29, 2001, the Central Community School District, through its attorney, filed a Motion for Substitution of Party and Consolidation of the disciplinary proceeding captioned above with another Complaint (01-15) that is also pending against the same Respondent.

The Complainants, Natalie and Charles Shea, consent to the substitution of the school district as the Complainant in this case. The school district has investigated a complaint filed with it by Mr. and Mrs. Shea, pursuant to Iowa Code section 280.17 and 281 IAC chapter 102, has made investigative findings that the Respondent sexually harassed/abused students, and is now authorized to file a complaint against the Respondent, pursuant to 281 IAC 102.11(2). The Respondent has not resisted the Motion for Substitution of Party.

The Central Community School District requests consolidation of the two pending complaints because they involve same or similar actions by the employee within the Central Community School District. The Respondent has not resisted the Motion to Consolidate.

IT IS THEREFORE ORDERED, that the Motion For Substitution of Party is hereby GRANTED. The Central Community School District is hereby substituted for Natalie and Charles Shea as the named Complainant.

IT IS FURTHER ORDERED, that the Motion To Consolidate is hereby GRANTED. Case No. 01-12 and Case No. 01-15 are hereby consolidated for hearing.

Motion To Dismiss

On November 1, 2001, the Respondent, through his attorney, filed a Motion to Dismiss this Complaint for lack of jurisdiction because it was not resolved within 180 days as required by Iowa Code section 272.2(15). A Resistance was filed on November 13, 2001.

Iowa Code section 272.2(15)(2001) requires complaints to be resolved within 180 days unless good cause can be shown for an extension of this limitation. The complaint was filed on April 15, 2001. On September 12, 2001, the Board, on its own motion, extended the 180-day time limit for the following reasons: the delay in initiating the investigation due to other pending investigations; difficulty in scheduling witness interviews due to summer break; scheduling conflicts; and the need for additional time to conduct a hearing, prepare a proposed decision, and review of the proposed decision by the Board.

A Notice of Hearing was issued on October 15, 2001, which set the hearing for November 13, 2001. The hearing has been continued at the Respondent's request.

The Board was authorized to extend the 180-day time limit for the types of reasons reflected in the extension order, which constitute good cause. The Board has not violated the Iowa Code section 272.2(15) by failing to resolve the complaint within 180 days.

Moreover, even if the Board had violated the statute, dismissal of the complaint is not an appropriate remedy. The issue of whether the failure to perform a duty imposed by statute invalidates subsequent proceedings under the statute turns on whether the provision is mandatory or directory. The applicable test has been set out by the Iowa Supreme Court:

If the prescribed duty is essential to the main objective of the statute, the statute is ordinarily

mandatory and a violation will invalidate subsequent proceedings under it. If the duty is not essential to accomplishing the principal purpose of the statute but is designed to assure order and promptness in the proceeding, the statute is ordinarily directory and a violation will not invalidate subsequent proceedings unless prejudice is shown.

Taylor v. Department of Transportation, 260 N.W.2d 521, 522-523 (Iowa 1977).

In Taylor, the Court held that the failure to hold a driver's license revocation hearing within 20 days after the request for hearing was received should not preclude the Department of Transportation from holding a later hearing, in the absence of a showing of prejudice by the licensee. Id. at 523-524. The instant case is very similar.

The 180 day time provision in Iowa Code section 272.2(15) is clearly intended to assure that teachers or administrators who have violated the Criteria of Professional Practices are promptly disciplined as well as to eliminate uncertainty for those who have not in fact committed a violation. The statute is designed to assure order and promptness in the administrative process, which is the characteristic purpose of a directory statute. The general rule is that statutory provisions fixing the time, form, and mode of proceeding of public functionaries are directory because they are not the essence of the thing to be done but are designed to secure system, uniformity and dispatch in public business. Id. at 523. Iowa Code section 272.2(15) is directory in nature, not mandatory.

The Respondent has not established that he suffered any specific prejudice as a result of the delay in proceeding to hearing. The Respondent retained his license pending hearing and has not asserted that the delay in proceeding to hearing has negatively impacted his ability to present his defense. Dismissal of the complaint is not appropriate.

IT IS THEREFORE ORDERED, that the Motion to Dismiss is DENIED.

Motion To Reconsider Appointment of the Administrative Law Judge

On November 1, 2001, the Respondent, through his attorney, filed a Motion To Reconsider Appointment Of An Administrative Law Judge. The Central Community School District, through its attorney, filed a Resistance on November 13, 2001.

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The Respondent objects to the appointment of the administrative law judge as the presiding officer, contending that the appointment violates Iowa Code section 272.14, 282 IAC 11.8(2), and the Respondent's due process rights to a fair, impartial, and unbiased decision maker.

Iowa Code section 272.14 sets forth a procedure for selecting an administrative law judge when a hearing is requested pursuant to Iowa Code section 279.24. Iowa Code section 279.24 hearings concern the termination of administrators' contracts by a board of directors. Disciplinary hearings before the Board of Educational Examiners are not held pursuant to this Code section, and therefore the ALJ selection procedure outlined in Iowa Code section 272.14 is not applicable.

The Respondent also cites to 282 IAC 11.8(2) and objects to the appointment of an ALJ by the Board when no request for an ALJ has been made by the parties. However, 282 IAC 11.8(2) only provides a procedure for a party to request an ALJ when the notice of hearing describes the presiding officer as the Board. It does not restrict the Board's authority or discretion, pursuant to Iowa Code section 17A.11(1)(b), to appoint an ALJ to hear the case and issue a proposed decision.

IT IS THEREFORE ORDERED, that the Motion To Reconsider Appointment Of An Administrative Law Judge is DENIED.

Motion For Specific Statement

On November 1, 2001, the Respondent, through his attorney, filed a Motion For Specific Statement. The Respondent asks the Board to require the Complainant to provide a more definite and detailed statement of the alleged "inappropriate touching", "sexual behavior", and "related activity." The complaint was reviewed and does not appear to contain any of these terms. Rather, the statement that is attached to the complaint contains a very specific description of the Respondent's alleged actions towards the student. The Complaint provides sufficient notice to the Respondent of the allegations that are being made.

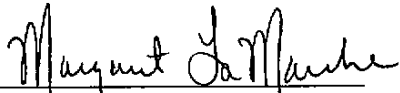
IT IS THEREFORE ORDERED, that the Motion for Specific Statement is DENIED.

Establishment Of New Hearing Date

A new hearing date needs to be established for the consolidated hearing on Case Nos. 01-12 and 01-15. By December 14, 2001, the

attorneys shall notify the undersigned administrative law judge and each other, in writing, of the dates after January 21, 2002 that they can be available for hearing. The attorneys shall also estimate the number of days necessary to complete the hearing.

Dated this <sup>29<sup>th</sup></sup> day of November, 2001.



Margaret LaMarche  
Administrative Law Judge  
Iowa Department of Inspections and Appeals  
Lucas State Office Building-Third Floor  
Des Moines, Iowa 50319

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Executive Director  
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**IOWA BOARD OF EDUCATIONAL EXAMINERS**

CENTRAL COMMUNITY	)	
SCHOOL DISTRICT,	)	Cases No. 01-12, 01-15
	)	
Complainants,	)	
	)	License No. 132546
and	)	
	)	<b>Final Order</b>
DR. STEPHEN D. REGAN,	)	
	)	
Respondent.	)	

This matter came before the Board of Educational Examiners upon submission of the parties agreement to mutual resolution of the pending complaint.

Pursuant to Iowa Code section 272.2(15) and 282 I.A.C. 11.4(5), the parties to a complaint before the Board may mutually agree to resolution of the complaint. "The agreement is not subject to approval by the board, but shall be acknowledged and may be incorporated into an order of the board."

**Order**


**THEREFORE**, the parties agreement to resolution of Board of Educational Examiners Complaints No. 01-12 and 01-15, is acknowledged by the Board and incorporated by attachment into this Order. In accordance with the agreement of the parties, the following Order is entered:

1. Stephen D. Regan's license is placed in a probationary status.
2. During the period of probation, Dr. Regan shall not seek or accept employment in any K-12 district in the United States.
3. Dr. Regan shall be professionally evaluated at his own expense by a licensed clinical psychologist or psychiatrist, approved by the Board pursuant to the terms of the attached agreement. The evaluator shall make a professional assessment of Dr. Regan and determine his professional skills and suitability to work as a counselor with teenage girls, and his ability and skills in appropriately recognizing professional boundaries in a counseling setting. Dr. Regan shall successfully complete whatever action required by the evaluator to meet the above criteria.
4. On or after July 1, 2002, upon receipt of a report from the evaluator verifying

successful completion of the recommended actions, Dr. Regan's license shall be returned to its current status.

5. Failure to successfully complete the terms and conditions set forth above may be grounds for further disciplinary action by the Board.

Dated this 24<sup>th</sup> day of January, 2002.

  
PETER HATHAWAY, VICE-CHAIRPERSON  
Board of Educational Examiners

**IOWA BOARD OF EDUCATIONAL EXAMINERS**

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CENTRAL COMMUNITY SCHOOL	)	
DISTRICT,	)	CASE NO. 01-12
	)	CASE NO. 01-15
Complainant,	)	
	)	
and	)	AGREEMENT
	)	
STEPHEN D. REGAN,	)	
	)	
Respondent.	)	

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**AGREEMENT BETWEEN STEPHEN D. REGAN  
&  
CENTRAL COMMUNITY SCHOOL DISTRICT**

1. Stephen D. Regan (hereinafter "Regan") licensee shall voluntarily suspend any efforts to obtain and will not accept any employment in any K-12 district in the United States. Regan's license shall be on a probationary status and while on such status Regan shall be professionally evaluated by a licensed clinical psychologist or psychiatrist (hereinafter "Evaluator"), at Regan's expense, and the Evaluator shall provide to the Board of Educational Examiners credentials showing licensure and good standing with the appropriate authority. Upon verification of such credentials the Evaluator shall be approved by the Board of Educational Examiners. Evaluator to provide sworn statement that, other than in connection with this said evaluation, he/she is not someone who is acquainted with Regan in any way, or affiliated or acquainted with any counselor or professional that Regan has a personal or professional and/or client-patient relationship.

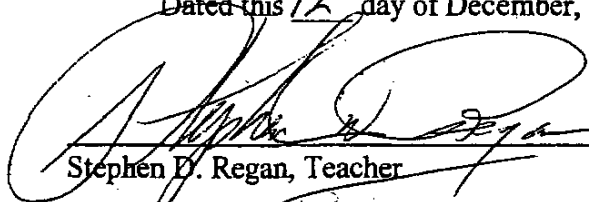
2. The Evaluator shall make a professional assessment of Regan and determine Regan's professional skills and appropriate suitability to work as a counselor with teenage girls, and his ability and skills in appropriately recognizing the professional boundaries in a counseling setting.

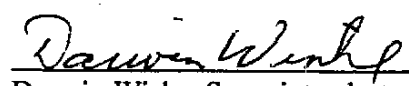
3. Regan shall successfully complete whatever action, including course work (ethics), therapy and/or counseling as required by the Evaluator to meet the above criteria. Upon successful completion as evidenced by the report of the Evaluator, Regan's license shall be returned to its current status on or after July 1, 2002. Failure to successfully complete the terms and conditions stated above may be grounds for further disciplinary action involving Regan's license.

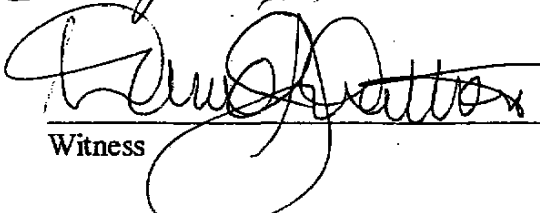



The parties recognize that this document shall be part of Regan's file.

Dated this 12 day of December, 2001.

  
\_\_\_\_\_  
Stephen E. Regan, Teacher

  
\_\_\_\_\_  
Darwin Winke, Superintendent

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

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