

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

Tape in file

OGDEN COMMUNITY)	Case No. 01-200
SCHOOL DISTRICT,)	(DIA no. 02BEE004)
)	
Complainant,)	
)	License No. 341598
and)	
)	
JAMES R. CORD, JR.,)	Final Order
)	
Respondent.)	

This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The hearing was conducted before Administrative Law Judge Margaret LaMarche on March 11, 2002. On March 15, 2002, Judge LaMarche issued a Proposed Decision which was served upon the parties and the Board. The Proposed Decision was presented to the Board for consideration on April 19, 2002.

The Board took action to initiate review of the Proposed Decision, and issued Notice of the Board initiated review providing the parties with an to submit briefs regarding whether the proposed sanction was appropriate in light of the findings within the Proposed Decision. No briefs were submitted within the time allowed. On July 23, 2002, the Board conducted its review of the Proposed Decision.

After having examined the Proposed Decision, the Board unanimously voted to adopt the Proposed Decision with the exception of the proposed sanction, and to substitute the sanction of a permanent revocation of the Respondent's license with no possibility of reinstatement. Therefore, the proposed decision is modified by striking all references to reinstatement of the Respondent's license, as follows:


The last sentence of section IV. Sanctions, on page 10, is revised to read:

"Under these circumstances, the public interest requires the Board to revoke the Respondent's teaching license, with no possibility of reinstatement unless the Respondent satisfies the Board that he is sufficiently rehabilitate.

The "ORDER" provision is revised to read as follows:

IT IS THEREFORE ORDERED that teaching license number 341598 issued to James R. Cord, Jr., is **REVOKED**, with no possibility of reinstatement ~~unless he establishes, to the satisfaction of the Board, that he has obtained counseling and undergone sufficient rehabilitation to assure the Board that this type of violation would not recur, and that it is in the public interest for his license to be reinstated.~~

Dated this 20th day of August, 2002.



PETER HATHAWAY, VICE-CHAIRPERSON
Board of Educational Examiners

IOWA BOARD OF EDUCATIONAL EXAMINERS

OGDEN COMMUNITY SCHOOL DISTRICT)
Complainant,)
AND)
JAMES R. CORD, JR.)
Respondent)

) CASE NO. 01-20
) DIA NO. 02BEE004
)
) LICENSE NO. 341598
)
) PROPOSED DECISION
) (DEFAULT)

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This matter came on for hearing before the undersigned administrative law judge on March 11, 2002 at 9:15 a.m. The Complainant, Ogden Community School District, was represented by its attorney, Sue Seitz. The Respondent, James R. Cord, Jr., did not appear for the hearing and was not represented by counsel. The hearing was tape recorded.

THE RECORD

The record includes the Complaint filed 8/20/01; Notice to Respondent re: Complaint, 8/30/01; Notice to Parties re: 180 day time period, 1/10/02; the Order extending the 180 day time period, issued 1/23/02; the Hearing Notice; Proof of Service; testimony of the witness; and the following exhibits:

- Complainant Exhibit 1: Respondent's E-Mail dated 12/7/00
- Complainant Exhibit 2: Respondent's E-Mail dated 1/15/01
- Complainant Exhibit 3: Letter dated 7/11/01 (Jim Cord to Friesen)
- Complainant Exhibit 4: E-Mails dated 3/29/01

FINDINGS OF FACT

1. The Respondent is a licensed teacher in the state of Iowa. He was employed as a high school instrumental music teacher by the Ogden Community School District for the 1999-2000 and the 2000-2001 school years. He was twenty-four years old at the time that he was hired, and this was his first professional

teaching position after college. He was married and had one child. (Testimony of Stan Friesen)

2. Stan Friesen has been the principal of Ogden Community High School since 1970. Mr. Friesen gave the Respondent very high evaluations during his two years of teaching at the high school. In Mr. Friesen's opinion, the Respondent was an exceptionally talented instrumental music teacher. (Testimony of Stan Friesen)

3. A.L. was one of the Respondent's band students. She was born in January 1983 and was sixteen years old when the Respondent began teaching. In November 1999, Mr. Friesen was contacted by the mother of A.L. A.L.'s mother described an e-mail that had been sent to her daughter, in which the Respondent stated that he would "miss her" when he was in Chicago and would be jealous of the people who would spend time with her while he was away. A.L.'s mother could not understand why the Respondent would be sending this type of e-mail to her daughter. Mr. Friesen told A.L.'s mother that he would meet with the Respondent and told her that if she wanted she could also speak to the Respondent directly.

Mr. Friesen and the high school counselor met with the Respondent and asked him about the e-mail. The Respondent told them that he sent the e-mail out of concern for A.L. He was worried that A.L. was suicidal, and he wanted to "keep her going" while he was out of town.

Mr. Friesen and the school counselor reminded the Respondent that he was not a counselor and that he needed to refer these types of problems to people who have appropriate training. They also warned him that as a handsome young man he needed to be careful that he was not drawn into a detrimental situation. They told him that he should only meet with the student in public places. The Respondent indicated to them that he understood. (Testimony of Stan Friesen)

4. From speaking to the family of A.L, Mr. Friesen was aware that A.L. was troubled and may have been having suicidal thoughts. At some point A.L. received psychiatric care and was hospitalized, although Mr. Friesen was unsure when this occurred. The Respondent later told Mr. Friesen that he helped get A.L. hospitalized. (Testimony of Stan Friesen)

5. Throughout the 1999-2000 school year, Mr. Friesen frequently visited the band room before, during, and after

school. He never observed anything inappropriate and never saw the Respondent alone with A.L. On one occasion, at approximately 5:00 p.m., he found the Respondent in the band room with A.L. and her sister, J.L. The doors were open and all three were busy in the band room. Mr. Friesen was concerned that the Respondent was spending too much time at work and not enough time with his family. He suggested that maybe they all needed to be getting home. (Testimony of Stan Friesen)

6. In March 2001, after a school band trip to Colorado, Mr. Friesen heard gossip at the school that the Respondent and A.L. sat next to each other on the bus during the trip, with a blanket covering them. Mr. Friesen and the high school counselor spoke to several students who had been on the trip, but were unable to verify that the gossip was true. Mr. Friesen then spoke to the A.L.'s mother, who was a chaperone on the trip. She told him that she sat across from the Respondent and her daughter, and it was not true. After this conversation, Mr. Friesen did not pursue the matter further. (Testimony of Stan Friesen)

7. In early June 2001, before leaving on a week long vacation, the Respondent sent Mr. Friesen an e-mail, telling him that he had been offered the band position at Lincoln High School in Des Moines. The Respondent had already signed a contract with the Ogden School District for the 2001-2002 school year.

When the Respondent returned from vacation, Mr. Friesen met with him at the school and told him that it was a terrible time of the year to find a quality band director. Mr. Friesen told the Respondent that he would have to submit a formal resignation and request release from his contract. Mr. Friesen warned that he could not recommend the release unless he was able to find a suitable replacement.

While Mr. Friesen was talking to the Respondent, a female high school student entered the office and angrily stated "if you want out why don't you just tell him, you're just a pervert." She then left the office. This student had just finished her junior year at Ogden High School. Mr. Friesen turned to the Respondent and asked him what that was all about. The Respondent replied that the student was just upset because she got a "C" in band.

Later, this student called Mr. Friesen and arranged to meet him later in the week. She told Mr. Friesen that the Respondent and A.L. were in love and wanted to marry. She also made

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allegations that the Respondent had sexual contact with another female student in November 2000, but after an investigation, the school district felt unable to substantiate this allegation. Therefore, this allegation was not included in the school district's complaint. (Testimony of Stan Friesen)

8. Subsequently, a male student who had just graduated (hereinafter, Student A), came to Mr. Friesen with additional information about the relationship between the Respondent and A.L. Student A stated that he had dated A.L.'s sister, J.L. J.L. told Student A that the Respondent and A.L. were in a relationship and were going to get married. She said that the Respondent's wife had left him, and he was going to buy a house in Madrid so that A.L. could be close to her parents. J.L. told Student A that the Respondent and A.L. told her parents about their plans to marry, and her father was not happy about it.

Mr. Friesen knew Student A and was confident that he would not gossip, lie, or spread rumors. He told Mr. Friesen that he came forward because he was concerned since his younger sister was a band student. He told Mr. Friesen that another student (hereinafter, Student B) also had information about the relationship between the Respondent and A.L. (Testimony of Stan Friesen)

9. Mr. Friesen was well acquainted with Student B, who had graduated from Ogden High School in May 2000 and was a good friend of his own daughter. He asked Student B to come speak to him, and felt confident that she would be truthful. Student B told Mr. Friesen that in July 2001, she was in Des Moines with A.L. and her sister, J.L. A.L. had a cell phone that the Respondent had given to her. A.L. called the Respondent and asked him to meet them for lunch, but when he heard that Student B was there, he did not want to come. Student B said she had been part of discussions where A.L. spoke about marrying the Respondent. (Testimony of Stan Friesen)

10. On July 11, 2001 at 9:30 a.m., Mr. Friesen called A.L.'s father and asked to speak to both parents right away. A.L.'s mother was at work, but her father came right over to the high school. Mr. Friesen told A.L.'s father what he had heard from the other students and asked permission to speak to A.L. and her sister. A.L.'s father agreed.

With the school nurse present, Mr. Friesen interviewed A.L. at 11:00 a.m. on July 11th. A.L. denied that she ever saw the Respondent away from school or that there was anything sexual

about their relationship. She stated that they were just really good friends, that the Respondent was a good counselor and listener, and that he had helped her be admitted to the hospital. She described the students who spoke to Mr. Friesen as "jealous" of their relationship. Her sister was interviewed at 3:15 p.m. J.L. also denied seeing the Respondent away from school or that there had been any improper relationship or contact between the Respondent and A.L. (Testimony of Stan Friesen)

11. Mr. Friesen and the school nurse met with A.L.'s parents the following morning, July 12, 2001 at 5:45 a.m. Mr. Friesen told them that both girls had denied any inappropriate relationship existed. The parents felt that their daughters were trying to protect the Respondent. A.L.'s father gave Mr. Friesen copies of two e-mails that his wife had received from the Respondent. They were dated December 7, 2000 and January 15, 2001. The father had not known about the e-mails until Spring of 2001, and at that time he did not pursue it because his daughter were so close to graduation.

a. In the December 7, 2000 e-mail, the Respondent admitted that he loved A.L. and stated that he did not want to be with anyone but her. He described problems that he was having in his marriage and his own conflict over what he should do. (Exhibit 1)

b. In the January 15, 2001 e-mail, the Respondent stated that he knows it is morally wrong, but that he fell in love with A.L. and she makes him so happy. He told her mother that he was scared and did not know what to do. He states that he wants to be with A.L. "forever." He thanked A.L.'s mother for being so supportive. (Exhibit 2)

(Testimony of Stan Friesen; Complainant Exhibits 1, 2)

12. After reviewing the two e-mails, Mr. Friesen called the Respondent and left a message on his voice mail stating that serious allegations had been made, and he wanted to meet with him at school at 1:00 p.m. On July 12, 2001 at 1:00 p.m., the Respondent appeared for the meeting with his mother, who is a school counselor, and an attorney. The Respondent denied any inappropriate relationships but admitted writing the two e-mails to A.L.'s mother. Mr. Friesen advised him that the e-mails alone could provide grounds for the revocation of his teaching license. (Testimony of Stan Friesen)

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13. On July 16, 2001, the Board accepted the Respondent's earlier resignation without any stipulation of finding a suitable replacement. Mr. Friesen was later contacted by the Des Moines School District and provided releases for information about the Respondent. Mr. Friesen provided the Des Moines School District with copies of the two e-mails sent by the Respondent to A.L.'s mother. It is his understanding that the Des Moines School District withdrew its employment offer to the Respondent. (Testimony of Stan Friesen)

14. In September 2001, Mr. Friesen discovered that there were personal e-mails on the Respondent's computer at Ogden High School. In an e-mail dated March 29, 2001 to his mother, the Respondent asked "Why am I in Love with an 18 year old student?" In response, his mother urged him to get personal counseling and to work on his marriage. She warned him that "jumping into something with this girl would be a mistake" and that "your relationship with her is just a symptom of your unhappiness.." (Testimony of Stan Friesen; Complainant Exhibit 4)

15. A Hearing Notice was issued on January 30, 2002 and was served on the Respondent by certified mail, return receipt requested. The Respondent signed the return receipt on February 5, 2002. The Hearing Notice required the Respondent to file an Answer within twenty days, and an Answer form was enclosed. However, the Respondent did not file an Answer. The Hearing Notice set the hearing for March 11, 2002 at 9:00 a.m. The Respondent did not appear for the hearing. (Hearing Notice; Proof of Service)

CONCLUSIONS OF LAW

I. Failure To Appear

282 IAC 11.7(1)"b" provides that a notice of hearing may be served by certified mail with return receipt requested.

The Respondent was properly served with Notice of Hearing by certified mail, and personally signed the return receipt on February 5, 2002. He failed to file an Answer within twenty days, as required by the notice and by 282 IAC 11.13(2), or to appear for the hearing. Pursuant to 282 IAC 11.13(2), any allegation in the notice of hearing not denied in the answer is considered admitted. By not filing an Answer, the Respondent has admitted that he violated the standards of professional ethics and practices of the teaching profession by having an inappropriate romantic relationship with a student.

282 IAC 11.23(1) provides that if a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

II. Violations of the Criteria of Professional Practices

The legislature created the Iowa Board of Educational Examiners (Board) with the exclusive authority to develop a code of professional rights and responsibilities, practice, and ethics. Iowa Code section 272.2(1)(2001).

The Board has promulgated rules that prescribe the professional rights and responsibilities, practice, and ethics for members of the teaching profession. 282 IAC chapters 12 and 13.

The complaint alleges that by having an inappropriate romantic relationship with a student, the Respondent has violated 282 IAC 12.3(1)"c", "d", and "f"; 13.5(2)"b"; 13.12(6) and (8); and 13.13(3).

282 IAC 12.3(1)"c", "d" and "f"

282 IAC 12.3(1) provides in relevant part:

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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The preponderance of the evidence in this record established that there was an inappropriate romantic relationship between the Respondent and one of his students, A.L. The inappropriate nature of their relationship was clearly established through the two e-mails sent by the Respondent to A.L.'s mother, by the e-mails he exchanged with his own mother, and by the hearsay statements of several students with knowledge of the relationship. Moreover, the Respondent's failure to file an Answer constitutes an admission of the allegations in the Complaint. 282 IAC 11.13(2).

By engaging in a romantic relationship with a student, the Respondent violated 282 IAC 12.3(1)"c", "d" and "f." The Respondent failed to make reasonable efforts to protect this student from conditions harmful to learning or to health and safety. A romantic relationship between a teacher and a student is inappropriate and unacceptable under any circumstances, but in this case the student was known to be particularly emotionally vulnerable, and the teacher was married. Engaging in such a relationship exposed the student to the risk of serious emotional harm, and was detrimental to learning as well as to her health and safety. In addition, such a relationship exposed the student to unnecessary embarrassment and disparagement. Finally, by engaging in a romantic relationship with this student, the Respondent used his professional relationship for his own private advantage. The Respondent lost sight of his professional responsibility and put his own personal needs before the best interest of this student.

III. Violations of the Criteria of Competent Performance

282 IAC 13.5(2)"b"

282 IAC 13.5(2)"b" provides:

13.5(2) Each teacher shall:

...

b. Adhere to and enforce lawful policies of the school district which have been communicated to the teacher.

Romantic relationships between teachers and students violate the policies of the Ogden Community School District. This was personally communicated to the Respondent by the principal in November 1999, and the Respondent was warned that his relationship with A.L. must be strictly professional. He was told that it was inappropriate for a band teacher to provide

personal counseling to a troubled student. By engaging in a romantic relationship with A.L., the Respondent violated lawful policies of the school district that had been communicated to him.

282 IAC 13.12(6) and (8)

282 IAC 13.12(6) and (8) provide in relevant part:

282-13.12(260) Human and interpersonal relationships.
Competent educators maintain effective human and interpersonal relations skills and therefore:

6. Shall comply with requests given by and with proper authority.

8. Shall exercise discretion and reasonable judgment in the use of authority.

By engaging in a romantic relationship with A.L., the Respondent failed to comply with requests from his principal that he maintain only a professional relationship with this student and not become personally involved with her. The Respondent failed to exercise discretion and reasonable judgment in his use of authority. The Respondent has violated 282 IAC 13.12(6) and (8).

282 IAC 13.13(3)

282 IAC 13.13(3) provides that each competent educator shall appropriately control emotions, the expression of which is likely to interfere with the designated task or be detrimental to the learning process or to otherwise compromise the educator's effectiveness. By engaging in a romantic relationship with a student, the Respondent has violated this rule. He has failed to appropriately control his emotions. The expression of romantic interest in a student by a teacher is detrimental to the learning process and compromises the educator's effectiveness.

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IV. Sanction

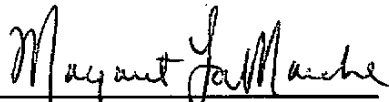
The evidence in the record suggests that the Respondent was initially motivated by a genuine concern for A.L. and a desire

to get her professional help for her personal problems. However, the Respondent obviously lost sight of his professional responsibility as a licensed teacher and allowed his legitimate concern to develop into an inappropriate and misguided romantic relationship with the student. A romantic relationship with a married teacher could only be detrimental to the well being of this emotionally vulnerable student. The Respondent abused his position of authority and violated the trust placed in him by the student, her family, and the school community. The Respondent placed his own personal needs and interests before his responsibility as an educator. Under these circumstances, the public interest requires the Board to revoke the Respondent's teaching license, with no possibility of reinstatement unless the Respondent satisfies the Board that he is sufficiently rehabilitated.

ORDER

IT IS THEREFORE recommended that teaching license number 341598, issued to James R. Cord, Jr., be REVOKED, with no possibility for reinstatement unless he establishes, to the satisfaction of the Board, that he has obtained counseling and undergone sufficient rehabilitation to assure the Board that this type of violation would not recur, and that it is in the public interest for his license to be reinstated. See 282 IAC 11.34.

Dated this 15th day of March, 2002.



Margaret LaMarche

Administrative Law Judge

Iowa Department of Inspections and Appeals

Division of Administrative Hearings

Lucas State Office Building-Third Floor

Des Moines, Iowa 50319

Cc: James R. Cord, Jr.
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Des Moines, IA 50312
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Sue L. Seitz
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Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 11.28. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of such fact, which affidavit must be attached to the motion. 282 IAC 11.23(3)

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 initiated by serving a notice of appeal with the board within 60 days after issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief. 282 IAC 11.28.

H. J. ...
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