

**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*

<b>KNOXVILLE COMMUNITY SCHOOL DISTRICT,</b>	)	
	)	
	)	
COMPLAINANT,	)	CASE NO. 01-30
	)	DIA No. 02BEE013
AND	)	
	)	
<b>DAN FRANCIS BARTH,</b>	)	LICENSE NO. 231583
	)	
	)	
RESPONDENT.	)	<b>FINAL ORDER</b>

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 September 9, 2002. On September 18, 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 October 11, 2002.

After having examined the Proposed Decision, the Board unanimously voted not to initiate formal review of the Proposed Decision, and to allow the Proposed Decision to become the final decision of the Board, unless an appeal was taken by one of the parties. No appeal was received by the Board within the time allowed by rule.

**ORDER**

**THEREFORE**, pursuant to Iowa Code section 17A.15(3) (2001) and 282 IAC 11.27(2), the Proposed Decision in this matter stands as the Board's final ruling in this matter. Accordingly, License Number 231583 issued to Dan Francis Barth is hereby **REVOKED**, with no possibility of reinstatement.

Dated this 20<sup>th</sup> day of November, 2002.

*Peter Hathaway*  
PETER HATHAWAY, VICE-CHAIRPERSON

ORIGINAL

RECEIVED  
EXECUTIVE DIRECTOR  
BOARD OF EDUCATION EXAMINERS

SEP 19 2002

IOWA BOARD OF EDUCATIONAL EXAMINERS

---

KNOXVILLE COMMUNITY	)	CASE NO. 01-30
SCHOOL DISTRICT,	)	DIA NO. 02BEE013
	)	
Complainant	)	
	)	LICENSE NO. 231583
AND	)	
	)	
DAN FRANCIS BARTH	)	PROPOSED DECISION
	)	[DEFAULT]
Respondent	)	

---

This matter came on for hearing in Conference Room 424, Lucas State Office Building, Des Moines, Iowa before the undersigned administrative law judge on September 9, 2002 at 9:00 a.m. The Complainant, Knoxville Community School District, was represented by its attorney, Andrew J. Bracken. The Respondent, Dan Francis Barth, did not file an answer nor did he appear for the hearing. The hearing proceeded in his absence, and the Complainant submitted its Exhibit 1.

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 (17A, 272).

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)

282 IAC 11.28 provides that any adversely affected party may appeal a proposed decision to the Board within 60 days after the issuance of the proposed decision. The board may initiate review of a proposed decision on its own motion or at any time within 60 days following the issuance of such a decision.

THE RECORD

The record includes the Complaint filed 11/09/01; the Hearing Notice, issued 7/1/02; Proof of Service; Responses to the Hearing Notice from the Complainant; and the Level II Investigative Report (Complainant Exhibit 1)

FINDINGS OF FACT

1. The Respondent is a licensed teacher in the state of Iowa. He was employed as the band director at the Knoxville Community School District during the 2000-2001 school year and had held this position for seven years. (Complainant Exhibit 1)

2. On October 26, 2001, a Level II Investigation Report concluded that the Respondent had engaged in a sexual relationship with a female student, which began while she was a senior in high school in the Knoxville Community School District. The student's parents, the student, and the Respondent were interviewed, and the Respondent eventually admitted the sexual relationship to the investigator, but denied that any part of it took place in school. He claimed that the relationship started after the student graduated. However, the student told the investigator that the relationship started in December of her senior year, and that they had engaged in kissing and sex at school. The investigator concluded that the student was more credible than the Respondent, who initially denied any romantic or sexual involvement with the student until he was confronted with incriminating evidence. (Complainant Exhibit 1)

3. The Respondent resigned his position with the Knoxville Community School District after resigning his position as band director. (Complainant Exhibit 1)

CONCLUSIONS OF LAW

1. 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 on July 13, 2002. He failed to file an Answer within twenty days, as required by the notice and 282 IAC 11.13(2), or to appear for the hearing.

SEP 19 2002

DIA No. 02BEE013

Page 3

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.

2. 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) (2001).

The Complaint alleges that by engaging in an inappropriate sexual relationship with a student, the Respondent violated 282 IAC 12.2(1)"c" and 12.3(1)"c", "d", "e", and "f".

**282 IAC 12.2(1)"c"**

282 IAC 12.2(1)"c" provides, in relevant part:

**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 the board for a member of the teaching profession to be guilty of any of the following acts or offenses:

...

c. Sexual involvement with a student. Sexual involvement includes the following acts, whether consensual or nonconsensual: fondling or touching the inner thigh, groin, buttocks, anus, or breasts of a student; permitting or causing to fondle or touch the practitioner's inner thigh, groin, buttocks, anus or breasts; or the commission of any sex act as defined in Iowa Code section 702.17.

...

The preponderance of the evidence established that the Respondent had a sexual relationship with a student, in violation of 282 IAC 12.2(1)"c".

**282 IAC 12.3(1)"c"**

282 IAC 12.3(1) "c", "d", "e", and "f" provide 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.
- e. Shall not on the ground of race, color, creed, age, sex physical or mental handicap, marital status, or national origin exclude any student from participation in or deny the student benefits under any program nor grant any discriminatory consideration or advantage.
- f. Shall not use professional relationships with students for private advantage.

The preponderance of the evidence established that the Respondent had a sexual relationship with a student. Engaging in a sexual relationship with a student violates 282 IAC 12.3(1)"c", "d", "e", and "f".

**ORDER**

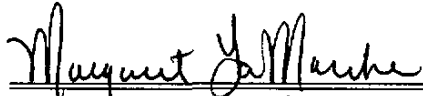
Engaging in a sexual relationship with a student is completely inconsistent with the ethical and professional responsibilities of a teacher and is an egregious offense. Moreover, the Respondent did not respond to the complaint, nor did he appear for the hearing.

SEP 19 2002

DIA No. 02BEE013  
Page 5

IT IS THEREFORE ORDERED, that if this proposed decision becomes the final decision, license no. 231583, issued to Dan Francis Barth, shall be REVOKED, with no possibility for reinstatement.

Dated this 18<sup>th</sup> day of September, 2002.



Margaret LaMarche

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

cc: Dan Francis Barth  
418 North Roche  
Knoxville, IA 50138  
(CERTIFIED)

Andrew J. Bracken  
AHLERS, COONEY, DORWEILER  
HAYNIE, SMITH, & ALBEE, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231  
(CERTIFIED)

Anne E. Kruse, Ph.D.  
Executive Director  
Iowa Board of Educational Examiners  
Grimes State Office Building  
(LOCAL)