

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

GREGG FUERSTENAU, SUPERINTENDENT,)	
CORNING COMMUNITY SCHOOL DISTRICT,)	Case No. 01-35A
)	(DIA no. 02BEE017)
Complainant,)	
)	License No. 336661
and)	
)	
ROBERT PHILIP DAVIDSON,)	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 November 14, 2002. On November 21, 2002, Judge LaMarche issued a proposed decision which was served upon the parties and the Board. The Respondent filed a timely notice appealing the proposed decision to the full Board.

A schedule for the submission of briefs was issued, and both parties submitted briefs addressing the propriety of the sanction set forth within the proposed decision. On May 16, 2003, after examining the proposed decision and briefs, the Board voted to accept the proposed decision in all particulars and issue an Order adopting the proposed decision as the final ruling of the Board.

Order

THEREFORE, the proposed decision in this matter stands as the Board's final ruling in this matter. Accordingly, the Respondent's license is **PERMANENTLY REVOKED** with no possibility of reinstatement.

Dated this 20th day of May, 2003.

Peter Hathaway
PETER HATHAWAY, CHAIRPERSON
Board of Educational Examiners

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GREGG FUERSTENAU, SUPT.)	CASE NO. 01-35
CORNING COMMUNITY SCHOOL DISTRICT)	DIA NO. 02BEE017
Complainant,)	
)	LICENSE NO. 336661
AND)	
)	
ROBERT PHILIP DAVIDSON,)	PROPOSED DECISION
)	
Respondent)	

This matter came on for hearing before the undersigned administrative law judge on November 14, 2002 at 8:30 a.m. The Complainant, Superintendent Gregg Fuerstenau on behalf of the Corning Community School District, was represented by its attorney, Rick Engel. The Respondent, Robert Philip Davidson, appeared for the hearing and was represented by his counsel, Michael Schilling. The Complainant filed a Motion for Protective Order, asking that the student not be identified by name in the proceedings. The motion was not resisted by the Respondent and was granted. The hearing was tape recorded.

THE RECORD

The record includes the Complaint, filed 12/11/01; the Order extending the 180 day time period, issued 6/18/02; the Hearing Notice; Proof of Service; Appearance of Counsel and Responses to Hearing Notice; Complainant's Request for Investigative File and Board Response; Respondent's Request for Investigative File; Answer, filed 10/28/02; Motion for Protective Order; and the testimony of the witnesses.

ISSUE

The Respondent, a licensed teacher and coach, admits to a sexual relationship with a sixteen year old female student. The only issue presented to the Board concerns the appropriate sanction. The school district has requested revocation of the Respondent's license. The Respondent has asked the Board to consider a 2-3 year period of suspension with the opportunity to establish rehabilitation.

FINDINGS OF FACT

1. The Respondent is a licensed teacher and authorized coach in the state of Iowa. After graduating from college in 1997, the Respondent was hired to teach social studies and coach girls' basketball at Burlington Notre Dame High School. The high school had a student body of approximately 140 students. While employed at Burlington Notre Dame Junior High and High School, the Respondent was an effective teacher and coach and earned the respect of students, parents, and his colleagues. The former principal at Notre Dame, a female student athlete who was coached by the Respondent for four years, and a parent/coach all testified that the Respondent was a committed teacher and coach who always behaved professionally with his students and athletes. This was a close community, and there were no allegations or rumors of improper behavior or inappropriate remarks by the Respondent while he was employed at Burlington Notre Dame. (Testimony of Respondent; Clark McFerren; Carlos Capdevila; Sara Hammer)

2. After four years at Burlington Notre Dame, the Respondent applied for a teaching/coaching position in the Corning Community School District. The Respondent was hired by the Corning Community School District to teach high school social studies and to coach girls' basketball. As a social studies teacher, the Respondent would teach approximately 65% of the school's 230 students. The Respondent was 27 years old when he began his employment at Corning. He moved from Burlington to Corning on July 7, 2001 and immediately started holding open gym at the high school. (Testimony of Gregg Fuerstenau; Respondent)

3. While he was teaching and coaching at Corning Community School District, the Respondent became involved in a sexual relationship with one of his student athletes who was a sophomore during the 2001-2002 school year. The student was fifteen years old when she first met the Respondent in July 2001 and turned 16 sometime during the fall of 2001. The Respondent admits the sexual relationship, which he describes as the biggest mistake any teacher could make. The Respondent testified that he has fallen in love with the student, who he described as attractive, very intelligent, and highly respected in her school community. In the Respondent's opinion, the student was very mature for her age, but he admits that she told him that she was sexually inexperienced. (Testimony of Respondent; Gregg Fuerstenau; Answer)

4. Since the student did not testify at the hearing, the record only includes the Respondent's account of their relationship. The Respondent initially became acquainted with the student during his open gym sessions in July and August 2001. During this time they had an appropriate coach-athlete relationship.

At the end of August, the Respondent chaperoned a back-to-school dance. According to the Respondent, the student approached him at the dance and talked to him for approximately 45 minutes. She then told him that she better spend time with her friends before they thought that she was "coming on" to the Respondent. She asked the Respondent if that made him uncomfortable, and he told her that it did. Later, she returned and talked to him again. At the end of the evening, the student put her hand up for a "high five" from the Respondent, but when he gave her a "high five", she squeezed his hand. (Testimony of Respondent)

5. The student was in the Respondent's social studies class every other day, but she would also go to his classroom to see him on days when she did not have class. He noticed that she made a lot of eye contact. In September, he confided in his eighteen year old sister and asked her what she thought of the student's behavior toward him. His sister told him that it sounded like the student had a serious crush on him.

The Respondent was beginning to realize that he really enjoyed the student's company. She made comments to him that suggested she might be interested in him and asked him if that made him uncomfortable; he told her it did. At the end of September, the Respondent confronted the student and asked her how she saw him and what was going on. The student told him that she wished he were a student so that they could date. The Respondent acknowledges that he should have immediately gone to his principal or another trusted mentor at this time, but he did not. Instead he told the student that they had to talk.

The Respondent and the student spoke on the grounds of the elementary school late one evening. The student told the Respondent that there were rumors that the two of them were having a relationship, but that she had denied the rumors. The student also told the Respondent that she had feelings for him. The Respondent told the student that he felt the same way but initially told her that they could not act on their feelings because it would ruin his career and their reputations.

The next night, the Respondent saw the student at open gym, but tried to avoid her. A parent approached the Respondent and asked him if he had heard the rumors. He told her he had. According to the Respondent, the parent told him that the student looked upset, and he should talk to her. The Respondent went up to the student and told her that she could call him. The student did call him and their conversations became more personal with both of them expressing their feelings for each other. The Respondent asked the student if there was anyway they could have a relationship and keep it discreet, and the student told him no, that the town was too small. The student told the Respondent that she was a virgin, but the Respondent told her that was not what he expected; that the relationship would not go any further than she wanted it to.

Shortly thereafter, the student invited the Respondent to come to her home late at night after her parents were asleep, and he agreed. The Respondent parked his car away from the student's home, and she let him into the house. Her bedroom was on the lower level away from her parents. The Respondent assumed that the student's parents were home, but they did not know that he was in the house. The two of them continued to meet like this several times a week throughout October and November. The Respondent told the student that he loved her. The Respondent testified that the student told him that she loved him. Eventually, they had intercourse on two occasions. (Testimony of Respondent)

6. On November 21, 2001, a friend of the student's family caught the Respondent as he was walking away from the student's house and followed him to his car. The police were called, and they alerted the high school athletic director. The athletic director went to the Respondent's house sometime after 2:00 a.m. The Respondent initially denied a relationship with the student. The next day, the Respondent learned that the student had admitted the relationship. There was a note on his desk asking him to meet with the principal and guidance counselor after school. At this meeting, the Respondent admitted the relationship. The Respondent was given the choice of resigning or facing termination. The Respondent resigned that day. The Board met in special session on November 27, 2001 to accept the resignation, and the Respondent moved away from Corning on December 7, 2001. (Testimony of Respondent; Gregg Fuerstenau; Mike Wells)

7. After his resignation, the Respondent went to Burlington Notre Dame to speak to his former principal, Clark McFerren,

about what he had done. In addition to his role as principal, Mr. McFerren had been a mentor and personal friend of the Respondent and had stayed in touch with him. Mr. McFerren testified on behalf of the Respondent at the hearing. Mr. McFerren testified that the Respondent was crying and very remorseful as he explained that he had an affair with a student. Mr. McFerren was very surprised by this revelation, which he felt was completely inconsistent with the Respondent's character. He believed that the Respondent had fallen in love with the student and became overwhelmed by his feelings. When asked about the Respondent's maturity level, Mr. McFerren testified that the Respondent seemed more like he was "fresh out of college" than 27 years old. He does not think that such an incident would ever occur again and feels that the Respondent should be given the opportunity to seek counseling and possibly return to teaching in two or three years. (Testimony of Respondent; Clark McFerren)

8. After his resignation, the Respondent was told by the school district and by the student's stepfather to have no further contact with the student. However, the Respondent met with the student on more than two occasions after his resignation. As a result, the family filed a criminal complaint against the Respondent for contributing to the delinquency of a minor, but he was acquitted of the charge after a bench trial.

The Respondent testified that his feelings for the student have not changed, but he realizes that she has to be allowed to live her life as a high school student. The Respondent admitted that he saw the student for approximately five minutes in May 2002 and she called him on October 1, 2002. The Respondent has not attempted to teach or coach since his resignation. He is currently living in Cedar Rapids and is employed as a salesman. He has had two counseling sessions with a therapist but could not afford to continue in therapy. The Respondent admitted that he still has no insight into why he entered into this inappropriate relationship. (Testimony of Respondent)

CONCLUSIONS OF LAW

I. Violation 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).

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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 and the Respondent admits a violation of 282 IAC 12.2(1)(c), which provides, in relevant part:

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 involves 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.

By his sexual relationship with a female student, the Respondent has violated 282 IAC 12.2(1)"c."

II. Sanction

As pointed out by the school district's superintendent, the Respondent has violated the "cardinal" rule of teaching standards and ethics. There are no gray areas to this violation.

There are sound policy reasons why the Board's rules do not distinguish between consensual and nonconsensual sexual relationships between students and teachers. While this relationship was technically consensual, the two people involved in the relationship were neither peers nor equals. As her teacher and coach, the Respondent was a trusted authority figure and was in a position of power over the student. He was also eleven older and considerably more experienced than the student. The student clearly trusted him. When the Respondent first became aware that the student was developing a personal interest or crush on him, it was his responsibility to seek whatever professional guidance or assistance he needed to ensure that all appropriate boundaries were maintained and their relationship remained strictly professional.

By the Respondent's own account, the student literally invited him to set appropriate boundaries and to discourage her adolescent crush. The Respondent's eighteen year old sister warned him that the student had a crush on him. Despite these red flags, the Respondent actively encouraged the student by seeking her out for personal conversations and by telling her that he had feelings for her. He allowed himself to become emotionally involved with the student, and very quickly entered into a physical relationship with her. Such a relationship could only be harmful to the student. The Respondent placed his own personal needs and interests before his responsibility as an educator and a coach to the detriment of this student. By entering into an intimate relationship with the student, the Respondent abused his position of authority and egregiously violated the trust placed in him by the student, her family, and the school community. Unfortunately, some will conclude that his actions reflect poorly on the entire teaching profession.

The Respondent appears to sincerely and deeply regret his actions, although his feelings for the student have not changed. He acknowledged that his actions have had serious emotional consequences for the student, have harmed the student's relationship with her parents, and have exposed her to ridicule from her peers. However, he appears to have no insight into why he was vulnerable to making these devastating and impulsive choices.

Disciplinary sanctions by licensing boards serve multiple purposes, including punishment of the violator, remediation to prevent a reoccurrence, deterrence of others, and protection of the public. There is no question that the egregiousness of this violation requires the Respondent to lose his license to teach and his authorization to coach. The only issue is whether a door should be left open to allow the Respondent to someday return to teaching and coaching if he establishes that he has undergone sufficient rehabilitation.

The Respondent's actions have had grave consequences for this student, her family, and the school community. The Respondent's personal interest in his license and his career as a teacher and coach is outweighed by the strong public interest in preventing similar violations in the future by the Respondent and by any other licensed teacher. The public interest demands that the sanction in this case serve as a strong deterrent to other licensees who may find themselves in similar situations.

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ORDER

IT IS THEREFORE recommended that teaching license number 336661, issued to Robert Philip Davidson, be REVOKED, with no possibility of reinstatement.

Dated this 21st day of November, 2002.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
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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.