IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF: **JILL A. LOWE,** **Respondent.**	**Case No. 18-43** **DIA No. 19BEE0004** **License No. 341152** **Order Regarding Proposed Decision**

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. A hearing took place before Administrative Law Judge David Lindgren on October 15, 2018. Judge Lindgren issued a proposed decision on October 17, 2018. The proposed decision was served upon the Respondent and the Board.

At its regular meeting on November 9, 2018, the Board voted to not initiate review of the proposed decision. Neither party appealed within the time allowed by 282 Iowa Administrative Code 11.28(1).

ORDER

THEREFORE, the Proposed Decision in the matter stands as the Board's final ruling.

Dated this 16th day of November, 2018.

Dr. Ann Lebo, Executive Director
On behalf of the Board

Copies to:

Jill A. Lowe (first-class mail and restricted certified mail)
RESPONDENT

Allison Schmidt (electronic mail)
ATTORNEY FOR STATE

RECEIVED
EXECUTIVE DIRECTOR
BOARD OF EDUCATIONAL EXAMINERS
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IOWA BOARD OF EDUCATIONAL EXAMINERS

In the Matter of:	)	DIA No. 19BEE0004
	)	Case No. 18-43
JILL A. LOWE,	)	
	)	
Respondent.	)	**PROPOSED DECISION**

STATEMENT OF THE CASE

On February 22, 2018, Barb Kruthoff, Superintendent of the East Sac County Community School District, filed a Complaint against Respondent Jill Lowe with the Iowa Board of Educational Examiners (the Board). The Complaint alleged that Respondent falsified progress monitoring data for special education students.

The Board later found probable cause to proceed to hearing and issued a Notice of Hearing and Statement of Charges. In particular, it charged that Lowe had falsified or deliberately misrepresented material information regarding the evaluation of students, in violation of 282 Iowa Administrative Code 25.3(3)(e).

A hearing was held on October 15, 2018 at the Wallace State Office Building in Des Moines, Iowa. The State was represented by Assistant Attorney General Allison Schmidt. Respondent Jill Lowe did not appear. Dr. Ann Lebo, Executive Director of the Board, appeared but did not otherwise participate. Complainant's Exhibits 1-5 were entered into the record. After witnesses Barb Kruthoff and Janet Stremmel testified, Ms. Schmidt made a brief oral argument and the matter was considered fully submitted.

FINDINGS OF FACT

Respondent Jill Lowe holds a standard license (Folder #341152) with endorsements for 5-12 mental disabilities mild/moderate, K-8 mental disabilities mild/moderate, and K-8 instructional strategist I: mild/moderate. Lowe had been employed by the East Sac County School District from July of 2009 through her resignation in May of 2014. During this time she was known by administrators, including Superintendent Barb Kruthoff, to have some fine teaching qualities, but also to be slow with paperwork, lackadaisical, and a bit of a disorganized mess.

In 2016, the district had an opening for a middle school special education teacher, for which Lowe was the only applicant. Although reluctant to do so because of their previous experience with Lowe, the district hired her "out of desperation." In order to help her succeed, the district placed her on a probationary period and assigned her an instructional coach to assist with issues seen during her previous employment.

Jessica Stremmel is a special education consultant with the Prairie Lakes AEA who is assigned to the various school districts to assist and oversee the IEP process. Stremmel

was assigned to Lowe's school and tasked with regularly meeting with her to ensure compliance with the IEPs. While she tries to meet weekly with all of her assigned teachers, Stremmel found it very difficult to find Lowe and consequently only met with her between five and ten times total. However, she was able to review Lowe's documentation monthly, and she became greatly concerned that Lowe had not taken progress monitoring data and had entered no documentation into the IEPs. This monitoring and documentation is essential. On one occasion, Lowe told Stremmel that she simply had not even taken the progress monitoring data. Stremmel shared this with school administrators.

Stremmel was scheduled to meet with Lowe on January 18, 2018, in order to review Lowe's progress monitoring of her students. Superintendent Kruthoff asked to attend that meeting. At some time before this meeting, Stremmel reviewed the IEPs and saw that Lowe had not entered any notes or progress data into the documentation. However, when she again checked on January 18, 2018, suddenly a great deal of information appeared to have been entered. This gave Kruthoff concern that perhaps Lowe had made up the information because Lowe had previously told Stremmel that she had not even been collecting the information.

Also, Superintendent Kruthoff had been told by a para-professional that she believed this data was not accurate and had been falsified. And it appeared that all of the data had been written with the same color pen and using the same handwriting. This was also suspicious because it looked like all of the documents had been prepared at the same time and by the same person. In some of the entries, the student, rather than Lowe, was supposed to have entered the information.

While at the meeting, Kruthoff asked Lowe about the sudden appearance of the data. Lowe admitted to her that the data were estimates of where the students were at that time. According to Stremmel, estimates are highly inappropriate and that accurate information and data is necessary and required. Based on this information, the district first placed Lowe on administrative leave, and Lowe later resigned from employment. The district then filed this complaint with the Board of Educational Examiners.

CONCLUSIONS OF LAW

The legislature created the Board of Educational Examiners with exclusive authority to license practitioners and develop a code of professional rights and responsibilities, practices and ethics. The Board has promulgated a Code of Professional Conduct and Ethics at 282 Iowa Administrative Code Chapter 25. The standards of professional conduct and ethics promulgated by the Board require that licensees abide by all federal, state, and local laws applicable to the fulfillment of professional obligations; failure to do so constitutes unprofessional and unethical conduct which can result in disciplinary action by the Board.[1] Additionally, the Board has the authority to enforce its rules

[1] 282 Iowa Administrative Code (IAC) 25.3.

through revocation or suspension of a license, or by other disciplinary action against a practitioner licensed by the Board.[2]

As noted, Count I alleges a violation of 282 Iowa Administrative Code section 25.3(3)(e), which prohibits:

> e. Falsifying or deliberately misrepresenting or omitting material information regarding the evaluation of students or personnel, including improper administration of any standardized tests, including, but not limited to, changing test answers, providing test answers, copying or teaching identified test items, or using inappropriate accommodations or modifications for such tests.

In particular, it is alleged that Lowe falsified and deliberately misrepresented the information and data that she entered onto the various IEPs prior to the January 18, 2018 meeting with Superintendent Kruthoff and Janet Stremmel. Upon review of the record, this allegation is supported.

First, Lowe was known to have a history of being disorganized, lackadaisical, and to have poor record keeping. This nature manifested itself in her failure to report and document student progress data on IEPs. This failure prompted the attention of district administration, including Superintendent Kruthoff, and led to a January 18, 2018 meeting to discuss and review her documentation. Just prior to that meeting, AEA representative Janet Stremmel reviewed Lowe's documentation and student progress monitoring. At that time, Lowe had essentially entered no information.

However, at the time of the meeting suddenly all of the documentation had been entered and completed, all with the same pen and in the same hand writing. This was a red flag because Lowe had already told Stremmel that she simply had not been keeping the data, and that it was not the case that she had actually collected the data but had not yet entered it. A para-professional who worked with Lowe raised further red flags when she reported to administration that the data entered by Lowe was not accurate and had actually been falsified. Finally, Lowe admitted to Superintendent Kruthoff that the data had been "estimates" of student progress. Estimates are not the same as accurately collected data. Essentially, the estimates were made up out of thin air. This constitutes falsification or deliberate misrepresentation of student evaluation information.

The State requests that Lowe be publicly reprimanded and that she be required to attend and complete an in-person ethics course. In determining the appropriate discipline, the Board is to consider[3]:

> 1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
> 2. The time elapsed since the crime or founded abuse was committed;

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[2] Iowa Code § 272.2 (2017).
[3] 282 IAC 25.3(1)(b)(2).

3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
4. The likelihood that the person will commit the same crime or abuse again;
5. The number of criminal convictions or founded abuses committed; and
6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

Where a violation is found, the Board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.
7. Order any other resolution appropriate to the circumstances of the case.[4]

In determining an appropriate sanction, the Board's primary concern must be the protection of students. The sanction should provide proportionate punishment for the particular violation, make provision for any necessary remedial actions, and deter other practitioners from engaging in similar behavior. In consideration of the factors noted above, it is found reasonable to publicly reprimand Lowe for her misrepresentation and to require her to attend and complete a course on ethics for educators.

ORDER

IT IS THEREFORE ORDERED that Respondent Jill Lowe shall be receive a public reprimand for her violation of 282 Iowa Administrative Code section 25.3(3)(e).

IT IS FURTHER ORDERED that within six months of the Board's acceptance of this Proposed Decision, Lowe complete an in-person fifteen hour ethics course. This course may either be "Ethics for Educators" course, which is hosted by the Iowa State Education Association (ISEA), or "Ethical Educators," which is hosted by Professional Educators of Iowa (PEI) Lowe shall be responsible for all costs associated with completing the course. She shall provide the Board with proof or her completion of this course in order to maintain her current licensure.

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[4] 282 Iowa Administrative Code (IAC) 11.33.

Dated this 17th day of October, 2018.

David Lindgren
Administrative Law Judge

cc: Jill A. Lowe (First Class Mail)
Ann Lebo, Board of Educational Examiners (Electronic Mail)
Allison Schmidt, AG (Electronic Mail)

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Motion to Vacate. Pursuant to 282 Iowa Administrative Code 11.23(3), decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing 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 unless an appeal of the decision on the merits is timely initiated within the time provided by rule 282 IAC 11.28. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

Appeal on the Merits. Pursuant to 282 Iowa Administrative Code 11.28, any adversely affected party may appeal a proposed decision to the Board within 30 days after issuance of the proposed decision. The notice of appeal must be in writing and 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, and 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.

BEFORE THE BOARD OF EDUCATIONAL EXAMINERS
OF THE STATE OF IOWA

In the matter of	)	Case No. 18-43
	)	Folder No. 341152
JILL A. LOWE,	)	
	)	**NOTICE OF HEARING**
Respondent.	)	**AND STATEMENT OF CHARGES**

YOU ARE HEREBY NOTIFIED that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing will be held on Monday, October 15, 2018, before Administrative Law Judge David Lindgren, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 1:00 p.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9th Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 1:00 p.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 Iowa Administrative Code rule 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the

request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 Iowa Administrative Code rule 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Allison Schmidt
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Telephone (515) 281-3395

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Ann Lebo, the Board's Executive Director, at (515) 281-5849 or to Assistant Attorney General Schmidt at (515) 281-3395.

B. SECTIONS OF STATUES AND RULES INVOLVED

Count I

7. Respondent is charged with falsifying or deliberately misrepresenting or omitting material information regarding the evaluation of students, in violation of Board rule 282 Iowa Administrative Code 25.3(3)(e).

C. JURISDICTION AND LEGAL AUTHORITY

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 Iowa Administrative Code chapter 11.

D. FACTUAL CIRCUMSTANCES

9. Respondent holds a STANDARD LICENSE (FOLDER # 341152) with the following endorsements: 5-12 Mental Disabilities Mild/Moderate, K-8 Mental

Disabilities Mild/Moderate, and K-8 Instructional Strategist I: Mild/Moderate. Respondent's license is current and will expire on April 30, 2019.

10. During all material events of this case, Respondent was employed with the East Sac County Community School District.

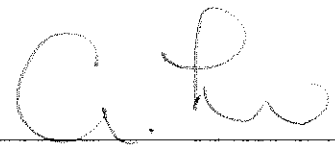
11. On February 22, 2018, the Board of Educational Examiners received a complaint against Respondent alleging various violations. On June 15, 2018, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

12. Investigation revealed that in 2017 and 2018, Respondent failed to maintain student IEPs and entered false progress monitoring data.

E. SETTLEMENT

13. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 Iowa Administrative Code rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 19th day of July, 2018.



Ann Lebo, Executive Director
Iowa Board of Educational Examiners

Copies to:

Jill Lowe (first-class mail and restricted certified mail)
RESPONDENT

Allison Schmidt (electronic mail)
ATTORNEY FOR STATE