

1984

The Iowa Professional Teaching Practices Commission (IPTPC): a history with assessment of Iowa's educators' understanding and perceptions of professional ethics and self-governance

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THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION (IPTPC) -
A HISTORY WITH ASSESSMENT OF IOWA'S EDUCATORS'
UNDERSTANDING AND PERCEPTIONS OF PROFESSIONAL ETHICS AND
SELF-GOVERNANCE

Iowa State University

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The Iowa Professional Teaching Practices Commission (IPTPC) - A history
with assessment of Iowa's educators' understanding and perceptions of
professional ethics and self-governance

by

Joseph S. Drips

A Dissertation Submitted to the
Graduate Faculty in Partial Fulfillment of the
Requirements for the Degree of
DOCTOR OF PHILOSOPHY

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Iowa State University
Ames, Iowa

1984

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DEDICATION

To Walt Disney, Fess Parker, Davy Crockett, and the concept
that when you believe you are right, you should go ahead.

CHAPTER I. STATEMENT OF THE PROBLEM

Introduction

The 62nd General Assembly of Iowa created the Iowa Professional Teaching Practices Commission (IPTPC). The IPTPC was given the responsibility of developing criteria of professional practices over matters of contracts, competent performance, and professional ethics for members of Iowa's teaching profession. In addition, the IPTPC was given the responsibility of holding hearings in response to the complaints of violations of IPTPC criteria for professional practices. The IPTPC can exonerate, warn, reprimand, or recommend that the State Board of Educational Examiners suspend or revoke the certificate of a member of Iowa's teaching profession.

The IPTPC has performed its function since 1967 with little public attention given to its work. With the exception of its own rules booklets and pamphlets, and sporadic articles in The Des Moines Register, little written attention is given to Iowa's Professional Teaching Practices Commission (IPTPC) and its established criteria for professional practices.

The establishment of a code of ethics and procedures to enforce codes of ethical conduct is an important part of the development of most definitions of professional status. Iowa's 41,000 public and independent school teachers and administrators desire to be viewed as members of a teaching profession. The IPTPC provides these educators with a form of professional self-governance. Self-governance by a

professional group requires a commitment to, and understanding of, the standards upon which their actions are to be judged.

This study develops a history of the IPTPC. This history reviews the commitment of Iowa's educators to the concept of professional self-governance as administered by the IPTPC.

Statement of the Problem

The problem for this study is to develop a history of the IPTPC. The current lack of this history makes it difficult for Iowa's educators to readily become familiar with and understand the IPTPC. Without this history, Iowa's educators with an immediate need to know more about the IPTPC -- its standards, procedures, powers, and previous decisions -- must assemble fragmented information from a variety of sources. This study measures Iowa educators' perceptions and understandings of ethical considerations brought before the IPTPC. These perceptions and understandings display, along with the decision positions of the IPTPC, a working or operational statement of standards of ethical practices for Iowa's educators. These standards need to be developed into a concise written code of professional practices for Iowa's educators.

The Hypotheses

This history examines the effectiveness of the IPTPC's attempts to establish, and rule upon violations of, standards of professional conduct for Iowa's educators. The perceptions of Iowa's educators, and those of their representative groups, are examined to determine if they reflect the standards and decisions of the IPTPC. Four operational

hypotheses are developed. Two of these hypotheses are supported with descriptive statistical data. One is tested as an empirical hypothesis. One operational hypothesis is not developed through a statistical framework, but is argued as fact. The following are the operational hypotheses for this study:

1. Iowa's educators have limited knowledge of the existence of the IPTPC, its established professional standards, or its powers, procedures, and decisions. Descriptive statistics are used to support this hypothesis.

2. Iowa's educators, as a composite group, perceive matters relating to professional standards, conduct, and ethics in a manner consistent with the decisions and positions of the IPTPC. Descriptive statistics are used to support this hypothesis.

3. Iowa's educators, through their representative groups -- teachers, superintendents, elementary principals, secondary principals, certified Department of Public Instruction Personnel, and teacher education institution personnel -- have significantly different perceptions relating to matters of professional standards, conduct, and ethics. An empirical hypothesis is developed to test this operational hypothesis.

4. Iowa's educators have need of a history of the Iowa Professional Teaching Practices Commission. Iowa educators' current lack of knowledge of and about the IPTPC, its standards, policies, and rules is inappropriate. No statistical treatment is developed to test this hypothesis. However, this hypothesis is developed as a logical position.

Definitions

The following definitions are taken from the IPTPC rules handbook and minutes of the IPTPC meetings and are used as definitions for this study.

Administrative and supervisory personnel - Any certified employee such as superintendent, assistant superintendent, principal, assistant principal, or other supervisory or administrative personnel who does not have as a primary duty the instruction of pupils in the schools.

Educator - Any person engaged in the instructional program including those engaged in teaching, administering and supervising and who are required to be certified (36, p. 27).

A professional practices commission - A legally recognized group composed of individual representatives of the teaching profession who are authorized to deal with the standards and practices, of ethics, competence, and academic freedom where protective and disciplinary action may be needed.

A professional standards board - An official body at the state level to which responsibility is assigned for (a) developing requirements and policies governing accreditation of teacher education institutions, issuance of licenses, and assignments of professional personnel; and (b) conducting studies designed to improve standards of licensure, accreditation, and assignment (34, p. 8).

Teacher - Any certified employee who is regularly employed for the instruction of pupils in the schools ... (36, p. 28).

The "profession of teaching" or "teaching profession" shall mean persons engaged in teaching or providing related administrative, supervisory, or other services requiring certification from the State Board of Public Instruction (36, pp. 1-2).

Delimitations

The information used to develop this history of the IPTPC was compiled from the written records of the IPTPC; additional information was obtained through interviews with current and past members of the IPTPC, the Executive Director of the IPTPC, representatives of the

Iowa State Department of Public Instruction, and representatives of the following professional organizations:

1. Iowa State Education Association
2. Iowa Association of School Administrators
3. Iowa Association of School Boards
4. National Education Association.

This historical information was obtained during 1981-1983. The written records portion of this history concludes with 1982.

The written records of the IPTPC were used to develop a survey instrument. After testing, this survey instrument was administered to teachers, superintendents, elementary principals, secondary principals, certified Department of Public Instruction personnel, and teacher education institution personnel. The instrument was developed and administered during 1983.

This study is directly concerned with the topic of ethical standards and practices. One of the legislated functions of the IPTPC is to appoint hearing officers to hear cases of contract terminations of administrators. This activity is not developed as a historical function of the IPTPC as it does not directly relate to what is seen as the primary purpose of the IPTPC or this study, the establishment and enforcement of standards of professional and ethical practices for Iowa's educators.

The topic of whether or not educators are members of a profession, within the usual definitions of that term, is not developed in this study. This study tests and explores educators' belief that they are

members of a profession. While educators' definitions of professionalism are of interest to this study, no attempt is made to justify those definitions as correct or valid.

CHAPTER II. REVIEW OF LITERATURE

Writing a history of an educational institution dealing with ethical practices and standards requires a blending of several topics for library research. These topics include the elements that make good history, the concept of ethics and professional status, the concept of ethics and professional self-governance, the elements that make a good code of ethics, and specific information relating to the current levels of professional self-governance.

The Writing of History

Any attempt to write history requires an approach or method that Barzun and Graff describe as an attempt to find the truth by means of common sense (3, p. 151). According to Gottschalk, the truth that is discovered may also be accepted as fact until another history on the topic is written with a collection of documents that changes the previous truth and fact (12, p. 8). This study is a history of a specific educational institution. The writing of a history of the Iowa Professional Teaching Practices Commission (IPTPC) has as its topic a reflection of the historical method itself. As Gottschalk states, a historian cannot avoid being committed to some personal philosophy and code of ethics (12, p. 10). He or she must have a standard of what is good or bad, a standard required of Iowa's educators by the IPTPC.

Gottschalk describes historical method as an attempt to critically examine and analyze the records of the past (12, p. 48). This history

of the IPTPC makes use of two types of information. The first is written; the second is oral. Both types of information must face tests of authenticity and credibility. The passing of these tests is interrelated with the methodology of this study.

The writing of a history requires the searching out of historical facts. For this study, this requires a collection of objects through survey, library research, and interviews. These objects must then be subjected to a process that will exclude the unauthentic and include the credible. The interaction of written information and interview responses requires the development of extensive background of the subject through written documents to properly use the interview approach and to prepare a useful survey instrument. All documentation then requires crosschecking with all other documents. At least two substantiating sources are required to lend authenticity to a historical point. Equivocal or conflicting data must be reported as unresolved or conflicting positions must be explained. All history requires careful summarizing and evaluating of historical sources.

Ethics and Professionalism

Iowa's educators work with approximately 567,000 public and independent school students. These educators, to include teachers and administrative personnel, are faced with ethical problems that should require professional expertise and decisions. Yet, the Iowa Professional Teaching Practices Commission (IPTPC) cannot claim that a majority of Iowa's educators know of the IPTPC's existence, have read or heard of its criteria for judging professional practices, have

an understanding of its rulings, or have any awareness of the IPTPC's powers. In recognition of this problem, the IPTPC states in its most recent publication, Iowa Teaching Profession: The IPTPC Role,

It is the intention of the commission in the near future to develop and conduct area workshops concerning the role of the commission in relation to professionalism, ethical practice and competent performance (33, p. 7).

This lack of knowledge about the IPTPC has its parallel with educators' concerns about professional ethics and self-governance on the national level. In 1956, Myron Lieberman, in an in-depth discussion of educational ethics, noted that the code of ethics adopted by the National Education Association (NEA) in 1929 and revised in 1941 and 1952 had, until then, apparently never been seriously questioned or analyzed in educational literature (40, p. 420). This apparent fact depicts one of the many obstacles faced by educators in their attempts to attain professional status. The fact is that the requirements to attain that status are seldom discussed with, explained to, or analyzed by educators. It is too easily possible to complete teacher preparatory programs without formal training in ethical conduct, state ethical standards, or rulings on such conduct and standards.

The establishment of a code of ethics and procedures to enforce codes of ethical conduct is an important part of the development of most definitions of professional status. Lieberman argues that such status requires the performance of a service function, an emphasis on intellectual techniques in service performance, specialized training over a long period of time, autonomy for individuals of the occupational group and the occupational group itself, acceptance of responsibility

for decisions and actions, emphasis on service rendered rather than economic gain, self-governance, and a code of ethics that is both clarified and interpreted for easy understanding (40, pp. 2-6). March and Simon contend that professionalism requires formal training, regulation of job performance, and definition of techniques and standards of performance (45, p. 70). Frymier argues that professional status requires service to others, the function of making judgments, establishment of an ethical code, and self-enforcement of that code. He also places an emphasis on the concept of altruism in performance of service (9, p. 42). Wilbert E. Moore adds to the definition of professionalism the idea that a professional deals with specific clients that are affected by the practitioner's competence. Moore also addresses the need for a commitment to a calling that involves acceptance of standards of operation (46, p. 3). This implies an obligation to regulate conduct and to guarantee adherence to an ethical code.

In a recent definition of professionalism, Magali Sarfatti Larson places an emphasis on an occupational group's desires to translate and control resources that are traded for social and economic rewards. Larson indicates that there are no data about the

... proportion of professionals who do in fact manifestly follow a service ideal; nor do we know how intense this orientation is, or how predominant, relative to other professional orientations; finally, we do not know if the service ideal is more widespread and more intense, in general, among professionals than among other workers (39, p. 59).

Thus, Larson downplays the concept of service. He describes it as a public posture used to gain social credit and autonomy. He places professional attempts at self-governance as an internal system of reward and punishment designed to instill a service ideal in its practitioners and to enhance a monopolistic control of services (39, p. 59).

In each of these definitions of professionalism, two concepts keep emerging. They include the concept that professionalism requires a voluntary or enforced commitment to a service ideal. They also include the concept that professional status speaks of ethical standards and a process for professional self-governance. It is from these two concepts that an occupational group is able to build an argument of professional status.

Ethics and Professional Self-Governance

The establishment of a code of ethics and self-governance has long been a stated goal of the National Education Association (NEA) leaders in their attempts to gain professional status for educators (53, p. 26). The NEA believes that it is important for teachers to become professionals. They view teaching as an occupation meeting most of the criteria for classification as a profession listed by Lieberman, March and Simon, Frymier, and Moore. One of the NEA's definitions of a professional is a person whose "... competence is regulated and judged by their professional peers" (53, p. 26). In a position that appears to support Larson's belief that professions attempt to control service resources, the NEA has worked for the establishment of state

professional standards and practices commissions to allow teachers to decide who will become teachers and who will remain teachers. It has met with some success on the national level. In 1973, the NEA reported that some 18 states had established some form of professional standards and practices commission. These states included Alaska, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Maryland, Minnesota, Nebraska, New Hampshire, North Dakota, Oklahoma, Oregon, South Dakota, and Texas (53, p. 27). The Iowa Professional Teaching Practices Commission (IPTPC) was established in 1967.

One of the stated functions of the IPTPC is to establish a set of criteria of professional practices to cover such actions as contract obligations, competent performance of all members of the teaching profession, and ethical practice toward other professionals and the clients of the teaching profession. Frymier lists the establishment of such a code of ethics on the local, state, and national level as a requirement of professional status (9, p. 42). It took the IPTPC from 1967 to 1973 to establish an accepted criteria of professional practices.

March and Simon, referring to the general study of formal organizations, point out that very little is known about them so little is written about them (45, p. 2). Little is known by educators about the topics of ethical standards and professional self-governance for educators. State education journals are the predominant source of debate or discussion on the development of standards of professional ethics and professional self-governance committees for specific states. Iowa's situation is no different. Don Bennett, Executive Director of

the Iowa Professional Teaching Practices Commission (IPTPC), indicates a concern and belief that the educators of Iowa know too little about the established standards of professional conduct or the IPTPC's responsibility to oversee such conduct (4). Written attention is seldom given to the IPTPC and its task of providing professional self-governance to Iowa's educators.

Codes of Ethics

It is one thing for an occupational group to decide to become self-policing. It is another to devise an effective and enforceable code of ethics to apply to professional conduct. Myron Lieberman listed criteria for effective codes of ethics. These standards are used as an initial point from which to review the professional practice rules of the Iowa Professional Teaching Practices Commission (IPTPC). These criteria are as follows:

1. A code must be clear. Just as a good law differentiates clearly between legal and illegal conduct, so a good code differentiates clearly between ethical and unethical conduct. It must not be so ambiguous that it means all things to all men. A code cannot possibly specify everything a person might do that would be unprofessional, but it should avoid mere exhortation or platitudinous injunctions. The code must lay down principles which are not so broad as to be completely nondirective but which are specific and clear enough to be applied in a variety of concrete cases.
2. Although a code must aim at the rendering of efficient service, it must avoid insisting upon unreasonable standards of behavior on the part of the practitioners. This does not mean that altruistic behavior is unreasonable or that the code cannot require service to be performed at great sacrifice to the professional worker himself. Doctors are required to provide medical services in emergencies, even when there is no chance that they will receive any compensation for such service. Nevertheless, the medical code is not unrealistic at this point, because it authorizes doctors to charge others a sufficient

amount to defray the doctors' expenses in serving those unable to pay.

3. A good code will not assume agreement on professional policy or purpose where none exists. It will not unwittingly commit the entire profession to a policy about which reasonable men can or do differ.

4. A code should deal only with professional conduct or with nonprofessional conduct that bears a clear and unmistakable relationship to professional conduct. Professional codes should not be used to regulate the personal and nonprofessional lives of the practitioners. Conduct which is irrelevant to the rendition of efficient service must not be included in the code.

5. A code must not confuse undesirable patterns of behavior with unethical ones. This is very important. A code must contemplate enforcement or it is useless. Every provision in the code must meet this test: Would the violation of this provision justify some kind of penalty or disciplinary action by the profession against the violator? If not, then the provision in question should not be in the code.

6. A code should protect the competent practitioners by a straightforward recognition of the various situations in which the practitioner may become the object of unjustified lay criticism and abuse; therefore, it will not regard lay popularity as the test of professional integrity and competence.

7. A code should be complete in the sense of not neglecting any important ethical problem of the profession.

8. A code should keep the concept of efficient service as the controlling consideration in all cases. It will not compromise this end for professional advantage, whether professional advantage be regarded as the advantage of the individual practitioner or the professional groups as a whole (40, pp. 417-418).

It is expected that the written standards of the IPTPC will have difficulty in meeting some of these requirements. It is also expected that this study will develop an operational code of practices and ethical standards from which the IPTPC functions. This operational code will be developed from the hearing records and official minutes of the IPTPC.

Professional Self-Governance --
State of the Art in Education

The numbers and types of contacts Iowa's educators have with their student clients suggest a need for exceptional ethical standards and a high probability that some violations of those standards exist. For example, Lieberman points out that between 1928 and 1948, the California Bar Association conducted 9,684 preliminary investigations of potential violations of professional ethics. These investigations led to disbarment in 141 cases (40, p. 448). During that same time, there were five times as many teachers as lawyers in this country. Frymier points out that between 1919 and 1965, the NEA had expelled one member for violation of ethical codes (10, p. 305). Hedo M. Zacherle Administrator of the Iowa Bar Association Committee on Professional Ethics and Conduct, has investigated more than 1,000 potential violations of professional ethics in the past five years. Those investigations have led to 117 letters of admonition, 32 letters of reprimand, three Supreme Court cases, and three license surrenderings. In July of 1982, 113 cases were still pending (54). Don Neumann, Assistant Executive Vice-President of the Iowa Medical Society, indicates that over the past five years, two to three doctors a year have had their licenses withdrawn and that an additional one to two have been denied membership in the Iowa Medical Society (48). Since 1967, the IPTPC has recommended six indefinite certification suspensions or revocation hearings by the State Board of Educational Examiners. With the numbers involved, both in educators and students, and in comparing education with other service occupations, it would seem probable that more

violations of professional standards and rulings on such violations would be expected for Iowa's educators.

The possibility exists that a better understanding of the IPTPC, its criteria for professional standards, and its power to oversee those standards, would help to improve the professional status of Iowa's educators as well as the quality of education received by their client. This position is stated as a possibility and not a fact because the effectiveness of any professional self-governance group is a concern that can be questioned. Larson argues that the effectiveness of, and possibly the existence of, occupational self-governance in any profession is a matter to face serious questioning (39, p. 59). Such organizations can serve as an occupational group's attempt to legitimize professional status as a matter of appearance without true concern for the establishment of a service goal or objective. This allows an occupational group control of entry and removal from the group as a means to guarantee resource scarcity and economic reward, as opposed to improved quality of service. Today, Lieberman argues that teacher contract negotiations procedures have effectively killed educators' interest in and concern for professional self-governance that requires policing of teacher ranks. He feels that teacher groups have decided that the policing of education is an administrative or supervisory requirement, not a professional obligation of teachers (41). However, such a position does leave open the desire to control entry into the teaching profession to maintain a scarcity of teachers and improve economic rewards. It also leaves open

questions about the functions and effectiveness of current existing professional practices commissions, including the IPTPC.

Today, Iowa's educators are operating in an environment that requires them to make numerous professional decisions. At the same time, they appear to be working without an understanding of the standards placed upon them by the IPTPC: Initial contact with the three state universities established the fact that little is done to improve understanding of Iowa's Professional Teaching Practices Commission. At Iowa State University, ethics and professional organizations are presented as topics in required teacher preparation programs, but the established standards of the IPTPC are not presented (7). At the University of Iowa, Dr. Dwayne Anderson, former chairman of the IPTPC, presents, on an invitation basis, a one-hour session on the IPTPC. He initiates this interest in this subject matter and admits that only a small fraction of the people going through Iowa's teacher preparatory program come in contact with this knowledge (1). At the University of Northern Iowa, approximately ten minutes of discussion time is devoted to the NEA Code of Ethics and no time is devoted to the IPTPC (51). These facts are lamented by the IPTPC's Executive Director, Don Bennett, because so many cases are forwarded to the IPTPC that he feels would not be, if sufficient knowledge of previous decisions existed (4). While any ignorance of laws, standards, or official policy cannot be excused, it can be understood when the information required for knowledge is not widely disseminated and no study of the IPTPC exists.

With the lack of interest expressed in topics of professional ethics and practices, library research on the topic proves somewhat frustrating. The most fruitful resource tools are state education journals dealing with specific commissions on professional practices and the case hearing histories and official minutes of the IPTPC.

CHAPTER III. METHODS

Barzun and Graff describe history as a story developed out of facts. It is the task of the historian to place the breath of life into what may appear to be an unorganized and/or unrelated sequence of events, documents, perceptions, and people (3, pp. 48-51). The organizational structure of this history relies upon the development of a logical sequence of fulfilling needs to better understanding the formation, procedures, functions, perceptions, operations, and actions of the Iowa Professional Teaching Practices Commission (IPTPC). A part of this history is a comparison with, and assessment of, the movement for the establishment of educational professional self-governance commissions in the 50 states of the United States. This provides a national reference point from which to assess the level of professional standards and self-governance in Iowa. A further need is an explanation of the functions, purposes, procedures, membership structure, and rules of the IPTPC. This is provided as a reference point from which to understand the IPTPC's history. This history includes fulfillment of the need for an analysis of the level of instruction in professional ethics by Iowa's teacher preparation institutions. It also includes an assessment of the level of understanding of Iowa's educators -- teachers, administrators, Department of Public Instruction personnel, and teacher preparation personnel of Iowa's colleges and universities -- and of the professional standards established for them and the IPTPC established to interpret and enforce those standards. There is a further need to provide development of the

sequence of events that led to the IPTPC's existence and an analysis of the IPTPC's professional standards using existing criteria for the development of professional codes of ethics and standards. The need to complete these steps provides the basis for eight purpose statements and one statistical hypothesis. Specific purposes and hypothesis statements are as follows:

1. To provide an assessment of the establishment of educational professional ethics and self-governance commissions in each of the 50 states of the United States. It is suspected that levels of activity for, enforcement of, and legislation to establish professional self-governance are by no means standard throughout the United States. This information will serve as an update on previous studies on this topic by Lieberman and the NEA and provides perspective for understanding the Iowa situation.
2. To provide an explanation of the functions, purposes, procedures, membership, and rules of the IPTPC. This information is believed to be lacking in the knowledge base of most Iowa educators.
3. To provide an analysis of Iowa's teacher preparation institutions' curriculums and their attempts to prepare their clients for concerns of professional ethics and the IPTPC. It is suspected that any such attempts are minimal. This information will serve as an analysis of the state of Iowa's professional ethics preparation for its teaching candidates.
4. To provide an assessment of the level of understanding and knowledge of the IPTPC by Iowa's educators. It is suspected that Iowa's

educators have minimal knowledge of the IPTPC existence and its professional self-governance standards. It is postulated that as a composite group, Iowa's educators perceive matters relating to professional standards, conduct, and ethics in a manner consistent with the decisions and positions of the IPTPC. It is also postulated that Iowa's educators, by groups -- teachers, superintendents, elementary principals, secondary principals, certified Department of Public Instruction personnel, and teacher education institution personnel -- have significantly different levels of perceptions relating to matters of professional standards, conduct, and ethics. Statistical hypothesis: there will be no significantly different perceptions of matters relating to professional standards, conduct, and ethics by the representative groups of Iowa's educators.

5. To provide a history of the development of the IPTPC. It is suspected that this history will reflect a struggle for definition of purpose that develops into a case history that helps to further define the written and operational professional standards of Iowa's educators.

6. To provide a history of the rulings of the IPTPC. It is suspected that this history will reflect the evolutionary development of legal and operational professional standards for Iowa's educators and that this history will depict open discussion by representative groups of Iowa's educators about what professional ethics should mean to Iowa's educators.

7. To provide analysis of the written and professional standards established by the IPTPC as criteria for judging the ethical practices

of Iowa's educators. It is suspected that the established written standards will fail to properly meet the criteria of good codes of ethics depicted by Lieberman. Assuming that the written standards are the key with which to gain access to the operational expectations of the IPTPC, a criterion to be developed from the case hearing reports, there are two sets of IPTPC standards to discuss. The first set of standards exists as a written code. The second set needs to be defined from IPTPC hearing decisions.

8. To provide an analysis of the value of educational professional self-governance in Iowa and whether or not the IPTPC enhances the position that Iowa's educators are serving in professional status. It is suspected that the IPTPC developed as a desire to legitimize an occupational group as a profession and may be gradually achieving that goal.

Each of the eight purposes of this history is developed in further detail. The organizational format of this development includes: (1) questions to be answered under each purpose, (2) sources to be used to answer those questions, and (3) procedures used to gather necessary information. When interview or survey questions support the purpose statement's questions, they are listed. The survey instrument was used to support and develop answers to the questions of "Iowa Educators' Understanding of Professional Self-Governance." The interview questions were used to support and develop answers to the questions of "Developmental History of the IPTPC" and "History of Rulings of the IPTPC." The review of information resulting from, and analysis of, interviews

is reported under the heading "Analysis of the IPTPC." This listing of interview and survey questions is provided to link them to required information questions for which they were developed. A listing of interview questions is found in Appendix A. A listing of survey statements is found in Appendix B.

National Status of Educational Professional Self-Governance

The Iowa Professional Teaching Practices Commission (IPTPC) is the immediate concern of this history; but the fact cannot be overlooked that the IPTPC developed at a time in which professional self-governance for educators was a topic of national discussion. The status, successes, and difficulties of the IPTPC logically would be reflected in the existence of professional self-governance commissions across the United States. The future role of the IPTPC could well be influenced by the continued growth, stagnation, or retreating of this movement on the national level. Questions must be asked about current status of the professional self-governance movement on the national level.

Questions

1. What is the current status of professional self-governance commissions in the United States?
2. What are the basic established standards of professional self-governance commissions in the United States?
3. What are commission powers in areas of criteria for certification and preparation of teachers, accreditation of teacher education

programs, performance and competency, teacher contracts, continuation in profession, and ethical conduct?

4. How do the standards and powers of the other 49 states compare with those of the IPTPC?

5. Are there particular aspects of other state professional standards and practices commissions that could be used effectively in Iowa?

6. How do the other 49 states overcome the problem of lack of client knowledge and use of professional standards and practices commissions' rules, standards, and procedures?

Sources

In May of 1973, the National Education Association (NEA) published "What to Tell Parents about Professional Self-Governance" in Today's Education. This article listed the current status of development of professional practices and standards boards across the United States. Material from Myron Lieberman's studies of professional ethics is used to support the history of the development of these commissions. The 1982 publication of the National Education Association (NEA), Standards and Certification Bodies in the Teaching Profession, is used to update current status of professional practices and standards boards across the United States.

Procedures

Library research produced the original National Education Association (NEA) materials and Myron Lieberman's discussion of professional

ethics and standards. In addition, telephone contact with Mr. Samuel Ethridge of the National Education Association led to obtaining the current reference source, Standards and Certification Bodies in the Teaching Profession.

Interviews were conducted with Mr. Don Bennett and Dr. Dwayne Anderson of the IPTPC, Mr. Ted Davidson of the Iowa Association of School Boards, Mr. Lyle Kehm of the Iowa Association of School Administrators, Mr. Ron Thompson of the Iowa State Education Association, and Dr. Robert Benton of the Iowa Department of Public Instruction to determine the current status of professional practices and standards boards. Telephone contact with Myron Lieberman provided additional information.

Analysis of the IPTPC

Iowa's educators are perceived as having too little knowledge about the IPTPC. Certain points of factual knowledge about the functions, purposes, procedural formats, membership structure, and standards of professional conduct need to be reviewed and discussed. These points will provide a basis of knowledge for further understanding of the role to be played by the IPTPC in making the term professional an appropriate description of Iowa's educators. In addition to factual knowledge that is available in document form, representatives and former members of the IPTPC have considerable knowledge of value to an analysis of the IPTPC. Such an analysis requires that numerous questions about the IPTPC be answered.

Questions

1. What are the functions and purposes of the IPTPC?
2. What are the procedural formats established by the IPTPC?
3. What membership structure and appointment procedures exist for commission members of the IPTPC?
4. What are the established standards of professional conduct for educators?
5. What are the viewpoints and understandings of the former IPTPC members and representatives of state educational professional organizations toward the IPTPC?

Sources

Library sources include the Iowa Professional Teaching Practices Commission pamphlet to include Iowa Code Chapter 272A, the official minutes of the IPTPC, the hearing reports of the IPTPC, and interviews with past and current members of the IPTPC.

Procedures

In addition to library research, interviews were conducted with the current and past members of the Iowa Professional Teaching Practices Commission. Interviews were limited to those members who had served at least two years by the end of 1982 and thus had participated in a significant portion of the IPTPC's history. All interviews were conducted in person with the exception of those noted. In those cases, telephone interviews were conducted because of distances involved and an inability to schedule interview appointments. Interview questions were developed

from historical concerns discovered during library research. Interview questions are provided in Appendix A. The interview subjects included the following IPTPC members:

Mrs. Donna Coffman - Teacher (Telephone Interview)
Mr. Duane L. VandeBerg - Elementary Principal (Telephone Interview)
Mrs. Ruth Foster - Teacher
Mr. Don Gunderson - Secondary Principal
Mr. Duane Anderson - University Professor
Mr. Darold Faulkner - Teacher
Mr. Robert Glass - Department of Public Instruction
Mr. David Moorhead - Superintendent (Telephone Interview)
Mrs. Barbara Smeltzer - Teacher
Mr. Dale Hackett - Elementary Principal
Mr. James Knott - Teacher
Ms. JoAnn Burgess - Teacher
Mr. Donald Parkin - Secondary Principal (Telephone Interview)
Mr. James Hoobler - University Professor (Telephone Interview)
Mrs. Marilyn Williams - Teacher
Mr. Richard Paulsen - Superintendent
Mr. Kenneth Lemke - Secondary Principal

Teacher Preparatory Programs

A perception exists that Iowa's educators have too little knowledge of the IPTPC. An obvious way to remedy that situation is to structure this knowledge as a formal part of the teacher preparatory programs of Iowa. To know the extent that concerns of professional ethics are a part

of these programs is, in part, to know the extent of the educational task before the IPTPC. Professional support of professional ethics without instruction in ethical concerns leaves the IPTPC with the task of remedial training. The extent to which this is true requires that several questions be posed to Iowa's teacher preparatory institutions.

Questions

1. Is the concept of teaching as a profession involving an idealistic view of service to profession, service over economic reward, accepted by teacher preparation institutions, and is this concept presented to prospective teacher candidates in Iowa?

2. Is the topic of professional ethics and self-governance considered important by teacher preparatory institutions in Iowa?

3. Is instruction in professional ethics an incorporated part of teacher preparation programs in Iowa?

4. Are ethical considerations a part of such instruction, dealing with concerns of contract obligations, disciplining students, moral standards, and competent and ethical performance by members of the teaching profession?

5. Are the existence of and standards of the IPTPC a part of such instruction?

Sources

Representatives of the teacher education departments of the teacher preparation institutions of Iowa were used to develop this segment of this history. The institutions involved were Briar Cliff

College, Buena Vista College, Central College, Clarke College, Coe College, Cornell College, Dordt College, Drake University, Faith Baptist Bible College, Graceland College, Grinnell College, Iowa State University, Iowa Wesleyan College, Loras College, Luther College, Marycrest College, Morningside College, Mount Mercy College, Northwestern College, Saint Ambrose College, Simpson College, University of Dubuque, University of Iowa, University of Northern Iowa, Upper Iowa University, Wartburg College, Westmar College, and William Penn College.

Procedures

Telephone interviews were conducted with department chairpersons or representatives of the education departments of the teacher preparation institutions of Iowa. The questions portion of "Teacher Preparatory Programs" comprised the agenda of those interviews. Responses are reported and tabulated as a part of this history.

Iowa Educators' Understanding of Professional Self-Governance

Perceptions about the IPTPC, its standards and rulings, and the educational groups it represents are readily available from those educators that have had contact with the IPTPC. However, that contact is limited to a very small sample of Iowa's educators. To understand the IPTPC, the role it does and can perform, the perceptions of Iowa's educators need to be surveyed. To understand those perceptions, specific questions must be answered by a representative sample of Iowa's educators.

Questions

1. Do Iowa's educators believe that they should police their own ranks, limit access to teaching, and remove teaching certificates from those found in violation of established professional standards?

(Survey Statements 8, 9, 10, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, and 27.)

2. Do Iowa's educators believe in the concept of a service ideal?

(Survey Statement 6.)

3. Do Iowa's educators know of the existence of the IPTPC?

(Survey Statements 1 and 2.)

4. Do Iowa's educators know of and understand the established criteria of the IPTPC? (Survey Statements 3 and 4.)

5. Are the ethical perceptions of Iowa's educators consistent with the standards and rulings of the IPTPC? (Survey Statements 7, 11, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 33, 34, 35, 36, 38, and 41.)

6. Do Iowa's educators view themselves as professionals? (Survey Statement 5.)

7. Do contract negotiation procedures rule out the position that educators must police their own ranks? (Survey Statement 42.)

8. Do Iowa's educators perceive other educators as having first-hand knowledge of violations of professional conduct severe enough to warrant certificate suspension or revocation? (Survey Statements 39 and 40.)

Sources

Library resources include the official minutes of the IPTPC and its hearing records. Library sources were used to develop an instrument to measure the understanding of Iowa's educators reference the IPTPC and their perceptions as to the IPTPC's functions, roles, and rulings. The instrument used 42 statements with an 11-point response scale for each statement. Strong agreement was equal to "11," indifference or no opinion was equal to "6," and strong disagreement was equal to "1." The total instruments are a part of Appendix B.

Procedures

A random sample population of 200 school teachers, 100 superintendents, 100 elementary principals, 100 secondary principals, 50 certified Department of Public Instruction personnel, and 50 instructors at teacher certification institutions was generated through the Department of Public Instruction files. Survey instruments were administered to this sample population through the mail with return envelopes provided. The cover letter requesting this information is a part of Appendix B. One follow-up mailing was used. Telephone requests were used to obtain sufficient sample size from elementary principals and instructors of teacher certification institutions. Telephone contact was made with a random sample of nonrespondents to ascertain if their responses were similar to those of the respondents used for this study.

Data processing facilities of Iowa State University were used to generate the statistical information obtained from the survey instruments. The Statistical Package for the Social Sciences was used to

generate descriptive statistical data for each group and the composite whole. The statistical hypothesis was tested with each educational group serving as an independent variable to be compared with each instrument question, or dependent variable. A one-way analysis of variance was used with these data. A significance level of .05 was set for the F-statistics. Since group sizes were unequal, the Scheffé method of post hoc testing was used when significant F-ratios were obtained and null hypotheses were rejected.

Developmental History of the IPTPC

One of the most common elements of a history is a sequencing of facts and/or events. The facts and events that depict the history of the IPTPC relate to an interweaving of political, educational, ethical, and legal considerations. With an understanding that Iowa's educators are perceived as lacking knowledge of the IPTPC, the steps taken in the past to alleviate this problem are important to this study. In addition, the concerns of specific professional organizations, problems that the IPTPC has faced, and the influence of IPTPC leaders are important. Answering questions covering these areas provides a developmental history that depicts how the current IPTPC came to be.

Questions

1. What political, educational, ethical, and legal considerations were a part of the development of the IPTPC? (Interview Questions 1, 2, 13, 14, 15, 16, and 17.)

2. What is the history of attempts to educate Iowa's educators about the IPTPC? (Interview Questions 8 and 9.)
3. What professional organization considerations were a part of the development of the IPTPC? (Interview Questions 11 and 12.)
4. What events provided the historical sequence that led to the development of the IPTPC as it exists today? (Interview Questions 5, 6, 7, 10, 18, and 19.)

Sources

Library sources included the official minutes of the IPTPC and the rulings of the IPTPC. Interviews with previously listed professional group representatives and past and current members of the IPTPC were used to provide historical information. The same questions were presented to professional groups' representatives and IPTPC members. Those questions are listed in Appendix A.

Procedures

Previously described interviews were conducted with past and current members of the IPTPC who had served from 1972 through 1982. Interviews were also conducted with the representatives of the professional organizations representing Iowa's educators.

History of Rulings of the IPTPC

The case records of the IPTPC should directly reflect the ethical concerns of Iowa's educators. To better understand those concerns and the positions taken by the IPTPC on those concerns, it becomes important to review the most significant cases. This review should point out the

factual concerns of each case and identify the important ethical positions taken by the IPTPC. To accomplish this goal of review and to specifically define the case rulings of the IPTPC requires the answering of questions pertaining to case histories.

Questions

1. How many rulings, involving which educators and institutions, with what results, and on what subjects has the IPTPC ruled? (Interview Question 2.)

2. What ethical discussions and positions on the part of members of the IPTPC were a part of the development of case decisions? (Interview Questions 2, 3, 14, 15, 16, and 17.)

3. Has the membership composition of the IPTPC influenced case discussions and rulings? (Interview Question 1.)

4. How have the rulings and standards of the IPTPC held up when appeals are taken to the State Board of Educational Examiners? (Interview Questions 12 and 13.)

5. How did, or did, the political, educational, ethical, legal, and professional organization considerations affect the case decisions or history of the IPTPC? (Interview Questions 4, 18, and 19.)

6. What impact -- past, present, and future -- can be or can be hoped to be attributed to case hearing functions of the IPTPC? (Interview Question 20.)

Sources

Library resources include the official rulings and minutes of the IPTPC. In addition, Department of Public Instruction Board of Educational Examiners hearing results were used. Information obtained from interview subjects provided a knowledge base used to better understand the decisions of the IPTPC.

Procedures

The official minutes and rulings of the IPTPC were read, analyzed, and catalogued. Cataloging included type of hearing, parties involved, and recommendation of the IPTPC. Information obtained from the interviews was used to crosscheck and verify the library sources. Specific interview questions are found in Appendix A.

Analysis of Ethical Standards

One of the tasks of the IPTPC is to establish standards of ethical and competent performance. Any history of the IPTPC should address the relevancy and appropriateness of those standards. Such a review must explain whether or not those standards are compatible with the positions taken by Iowa's educators. It must also require a judgment concerning the comparability of written and operational standards of the IPTPC. If differences are found between written and operational standards, or if the operational standards further define the written standards, those operational standards must be discussed. Iowa's educators need a definition of the operational standards they are expected to adhere to.

Questions

1. Do the professional standards of the IPTPC meet criteria of effective ethical codes of conduct?
2. Do operational standards of the IPTPC reflect and/or further define the written standards of the IPTPC?
3. Are those written and operational standards compatible with the perceptions of ethical conduct held by Iowa's educators?

Sources

Library sources include Myron Lieberman's text, Education as a Profession, and Carl F. Taeusch's text, Professional and Business Ethics. The results of survey and interview information and the statistical information obtained provide source materials. Chapter 272A of the Iowa Code provides the written standards and practices to which analysis is applied. The operational standards are developed from case hearing reports of the IPTPC.

Procedures

The standards of proper codes of ethics were applied to the standards and practices established for Iowa's educators by the IPTPC. Written records of the IPTPC were used to develop an operational code of ethics and standards for Iowa's educators.

Assessment of the IPTPC

Once information is collected about the IPTPC, and its role of providing professional self-governance for Iowa's educators, it becomes appropriate to assess the IPTPC's effectiveness. Questions about

self-policing of a profession, enhancement of educational professional status, enhancement of a service ideal, role definition, and the future role of the IPTPC need to be answered.

Questions

1. Does the IPTPC effectively police the ranks of Iowa's educators?
2. Does the IPTPC enhance the position that Iowa's educators are serving in a professional status?
3. Does the IPTPC enhance the concept of a service ideal or does it work to establish a control of resources and rewards for Iowa's educators?
4. Does the IPTPC play a clarifying role in the development of professional standards and ethics for Iowa's educators?
5. How can the IPTPC better meet the needs of Iowa's educators in the areas of professional standards and self-governance?

Sources

All the written and oral data developed by this study and the statistical information generated provide the basis for this section of this history.

Procedures

Chapter IV, Findings, and Chapter V, Summary, Conclusions, Limitations, Discussion, Recommendations, provide an assembling and analysis of the information obtained by this study. This history resulted from the collection and review of written and oral information

applied to a historical process of testing and rejecting or accepting opinions and facts.

CHAPTER IV. FINDINGS

National Status of Educational
Professional Self-Governance

Any attempt to further define the Iowa Professional Teaching Practices Commission (IPTPC) requires that some background information exist about the past and current level of activity in the area of educational professional self-governance. For educators to become professionals, they must be able to set standards of entry and exit from the profession. This position develops the argument for the establishment of professional practices commissions and professional standards boards. In "What to Tell Parents about Professional Self-Governance," the National Education Association (NEA) in 1973 argued:

In nearly every state, the responsibility for the governance of the teaching profession lies with people who are not teachers. Decisions about teaching should be made, however, at the point of impact: the teacher. The profession is not yet governing itself: practitioners are not yet making determinations about the accreditation of teacher education programs. A state Professional Standards and Practices Commission would allow teachers to decide (a) who becomes a teacher and (b) who remains a teacher (53, p. 26).

This history attempts to assess the establishment of educational professional self-governance by first reviewing a comparison of the self-governance movement's level of acceptance for the years 1973 and 1982. The current state commissions' standards and powers are reviewed in comparison with those of the IPTPC. The hearing case loads of other states' professional self-governance commissions are compared to those of the IPTPC. A review is made of funding levels and their relationship to client use of professional self-governance commissions.

Commission status - 1973 and 1982

The original concept that led to Iowa's Professional Teaching Practices Commission (IPTPC), and other state practices commissions and standards boards, came from the New Horizons in Teacher Education and Professional Standards movement of the early 1960s (34, p. 7). As a result of this movement and subsequent steps to set up professional self-governance, by 1973, 18 states had established commissions empowered to hold hearings on professional practices (Table 1). Of these, 17 could adopt rules, regulations, and procedures of ethical standards and practices. Thirteen could warn and reprimand professionals. Thirteen could recommend or cause suspension, revocation, and reinstatement of teaching certificates. These figures represent the accomplishments of the initial movement for the establishment of professional practices commissions. Professional standards boards that would hold powers to establish criteria for entrance into a profession proved more difficult to establish. In 1973, only eight states had commissions that established or recommended criteria for certification and preparation. Only three had commissions that established or recommended accreditation of teacher preparatory programs. And only three, to include Iowa, had commissions that established or recommended criteria over teacher contract matters. Obviously, the establishment of the movement for professional practices commissions was easier to accomplish than that of professional standards boards. This is a situation that has continued to exist.

Table 1. Professional self-governance commissions, 1973^a

	Hold hearings	Adopt rules, regulations, procedures	Warn and reprimand
Alaska	X	X	X
California	X	X	X
Colorado	X	X	X
Florida	X	X	X
Georgia	X	X	
Idaho	X	X	X
Iowa	X	X	
Kansas	X	X	
Kentucky	X	X	X
Maryland	X	X	
Minnesota	X	X	X
Nebraska	X	X	X
New Hampshire	X	X	X
North Dakota	X	X	X
Oklahoma	X	X	X
Oregon	X	X	X
South Dakota	X	X	X
Texas	X		

^aSource: (53, p. 27).

Recommend suspension, revocation, reinstatement	Establish or recommend certification and preparation criteria	Establish or recommend teacher preparation program accreditation	Establish or recommend teacher contract criteria
X	X		
X	X	X	
X			
X	X		
X			
X			X
X	X		
	X	X	
X			
X			X
X	X		
X			
X	X		
X	X	X	X

The most recent information on state professional practices commissions and standards boards again comes from the National Education Association (NEA) in its publication, Standards and Certification Bodies in the Teaching Profession, 1982. This publication updates information on professional self-governance by educators. It points out that, in the past three years, 28 states had commissions empowered to hold hearings that could lead to reprimands, certificate suspensions, and/or revocation of certificates (Table 2). Twenty-six states had commissions capable of recommending or issuing teacher reprimands and/or certificate suspensions or revocations. Seventeen commissions were designated as either professional standards boards or professional practices commissions.

The number of actual practices commissions and standards boards has not changed dramatically in the past ten years. Moreover, ten states still have no provisions for teacher standards boards or practices commissions of any type. These states are Connecticut, Delaware, Hawaii, Maine, Michigan, Mississippi, Montana, New Mexico, Ohio, and Washington. This lack of development of practices commissions and standards boards lends support to Myron Lieberman's position that the professional self-governance movement is no longer an active and growing movement.

Standards and powers

Most professional self-governance commissions' standards were developed from a framework built around the code of ethics of the National Education Association (NEA). In addition to Iowa, 12 other

Table 2. Professional self-governance commissions, 1982^a

	Hold hearings	Recommend/issue reprimands or certificate suspensions and revocations	Designated professional standards and practices bodies	Governing bodies holding autonomous powers
Alabama	X	X		
Alaska		X		
Arizona	X	X	X	-- b,c,d,e
California	X	X	X	-- b,c
Florida	X	X	X	-- b,c,d
Georgia	X	X	X	-- b,c,d
Idaho	X	X		
Illinois	X	X	X	-- b,c,d,e
Indiana	X	X	X	-- b,c,e
Iowa	X	X	X	-- b,c,d
Kansas	X	X	X	-- c
Louisiana	X	X	X	-- b,c,d
Maryland	X			
Massachusetts	X	X	X	-- b,d
Minnesota	X	X	X	-- b,c,d,e
Nebraska			X	-- c
Nevada	X	X		
New Jersey	X	X	X	-- b
New York	X	X		
North Carolina	X			
North Dakota	X	X		
Oklahoma	X	X	X	-- b,c
Oregon	X	X	X	-- b,c,e
Pennsylvania	X	X		
South Dakota	X	X	X	-- c,d
Tennessee	X	X		
Texas	X			-- c
Utah	X	X	X	
Vermont	X	X		
Wisconsin	X	X		

^aSource: (47, pp. 7-27).

^bAutonomous power to hold hearings.

^cAutonomous power to adopt rules, regulations, and procedures.

^dAutonomous power to promulgate and enforce codes of ethics.

^eAutonomous power to establish preparation and certification standards.

state commissions have autonomous powers to hold hearings (Table 2). A total of 15, including Iowa, have the autonomous power to adopt rules, regulations, and procedures. Nine, including Iowa, have the autonomous power to promulgate and enforce codes of conduct. Unlike Iowa, five have the autonomous power to establish preparation and certification standards.

Obviously, the standards board powers of some state commissions could be used by the Iowa Professional Teaching Practices Commission (IPTPC) to enhance or enlarge its role. The IPTPC can be overruled on rules and regulations by the legislative and executive branches of government. Hearing results can be overruled by the Iowa Board of Educational Examiners.

These conditions give Iowa's educators the ability to develop guidelines, standards, and policies within the framework of established state government procedures. Potential problems exist when and if educators as a profession are at odds with established state procedures, decisions, or policies.

Usage

A professional practices commission can exist in name only without a legislated or funded ability to function. For a commission to be effective, it must deal with the professional problems faced by educators. That requires that hearing standards be established and hearings held on professional conduct. Thus, it requires use by the professionals it represents. Over the past three years, 1980-1982, the IPTPC has had 75 cases. Four resulted in certificate revocations.

In other states, commission case loads have ranged from zero to 450. The highest case load was found in New York. The second highest was found in California with 244 cases, with 182 certificate revocations in the last three years (47, pp. 28-29).

The IPTPC's 75 cases over the last three years appear to be small in comparison with New York and California. Large differences also appear when budgets are compared. The California budget for 1981-82 was \$3,000,000. The Iowa budget was \$65,000 (47, pp. 8-11). It is probable that greater financial resources lead to greater client knowledge of professional self-governance commissions. However, perhaps state populations better explain case load differences than finances. A lack of usage of professional self-governance commissions is the norm, not the exception. Over the past three years, only eight bodies had eight cases or more per year. In addition to New York, California, and Iowa, they include Florida with 111, Arizona with 37, Michigan with 40, Minnesota with 30-40, Nebraska with 56, Oklahoma with 50, and Oregon with 40. Minnesota and Oregon both have higher budgets than the IPTPC, yet their case loads are lower (47, pp. 7-18).

While Iowa's case load is low compared to some large population states, it far surpasses those of the majority of states. Thus, though financial support can serve as a contributing factor toward insufficient client knowledge about the IPTPC, it cannot be the only answer. This lack of client usage also supports Myron Lieberman's position that professional self-governance as a movement is no longer an active or

growing movement. It is a fact that little has changed between 1973 and 1982.

Analysis of the IPTPC

Attempts to provide analysis of the Iowa Professional Teaching Practices Commission (IPTPC) must account for the legislated functions of the IPTPC. They must also deal with the positions and attitudes of the professionals working with and on the IPTPC. Two basic functions exist for the IPTPC. They are the establishment of standards and rules for Iowa's educators, and the conducting of hearings of alleged violations of those standards and rules. The people of the IPTPC include nine professionals drawn from the ranks of Iowa's educators to serve in the capacity of commissioners of the IPTPC. Those commission members, and representatives of the state professional associations, are capable of providing information vital to understanding the IPTPC. For that purpose, their interview responses are a part of this analysis.

IPTPC functions

The functions of the Iowa Professional Teaching Practices Commission (IPTPC) are clearly defined in the Code of Iowa, Chapter 272A (Appendix C). The IPTPC has the responsibility of developing criteria on contractual obligations, competent performance, and ethical practices toward educators, parents, students, and the community. The IPTPC is charged with the power to promulgate, amend, or repeal a rule. It may also upon petition issue a declaratory ruling on "... applicability of statutes and rules, policy statements, decisions and orders under its

jurisdiction" (36, p. 11). The IPTPC is also empowered to conduct hearings on professional practices complaints. With this power, the IPTPC has the power to subpoena evidence with which to conduct hearings. As a result of hearing responsibilities, the IPTPC exonerates, warns, or reprimands educators or recommends that the State Board of Educational Examiners suspend or revoke a teaching certificate.

Rules Under the rules-making powers, the IPTPC may be petitioned to promulgate, amend, or repeal a rule. The petition must be submitted to the IPTPC Executive Director. The Executive Director has ten days to mail copies to any interested parties. The petitioner has 30 days to submit views. The petition may be denied within 60 days or the IPTPC may set up a rule-making procedure.

In addition to responding to a petition for rules action, the IPTPC may adopt, amend, or repeal any rule as a result of its own action.

Whether through petition or IPTPC action, if rules action is to be taken, notice must be published in the Iowa Administrative Code at least 30 days ahead of action. The IPTPC may set up a hearing or wait for a petition from 25 interested persons or government subdivision, administrative rules committee, or by a state agency or association having 25 or more members. Thirty-five days are allowed to request a public hearing. Order of appearance at the rules hearing is proponents, opponents, and other witnesses. After IPTPC action on the rules, they are to be filed with the office of the Secretary of State. Rules will become effective 35 days after filing, indexing, and publication in the Administrative Code.

For good cause, the IPTPC or its Executive Director can formulate rules without action and hearing. In such a case, the reason or cause of action without meeting and hearing must be listed with the action.

As a result of the IPTPC's rules-making powers, criteria for professional practices were filed 12 July 1973 (Appendix C). The specific criteria cover statutes, contracts, conviction of crimes, sexual and criminal conduct toward students, and drug abuse. Under the topic of ethical practices toward educators, parents, students, and community, five principles were developed. They include commitment to student, public, profession, professional employment practices, and conduct of commission members and staff. The specific criteria of competent performance became effective 15 March 1978. They cover individual needs and individual potential, instructional procedures, communication skills, management techniques, competence in specialization, evaluation of learning and goal achievement, human and interpersonal relationships, and personal requirements.

Hearings The hearing procedure is the process through which a complaint of unprofessional conduct by an educator must pass. It is designed to provide both parties to a complaint, the accuser and the accused, with procedural due process.

When a complaint is filed, it must be filed in writing by certified personnel, their local or state organization, boards of education, administrators and other teachers of school districts outside of Iowa, or parents and guardians of students involved in a complaint. Ten commission copies plus one copy for each respondent must be filed.

The complaint may be amended or withdrawn prior to notification of the respondent and later if permission is granted by the IPTPC.

An attempt must be made by the IPTPC chairperson or director to settle the dispute informally between the two parties, if both parties are willing to meet and settle. The allegations will be investigated if the matter is not informally settled. After investigation, a report will be presented to the IPTPC with recommendation as to whether or not to proceed with the matter. At this point, the IPTPC can reject the case, cause further investigation, or set the case for hearing.

If the case is set for hearing, the complaint is forwarded to the respondent with an opportunity to file an appearance within 20 days. Appearance notice gains ten more days to answer. The answer may include statements, explanations, and additional facts. Notice of hearing must be served upon the respondent by certified mail with return receipt.

At the hearing, both parties may make opening and closing statements. The hearing may be conducted by the full IPTPC or a three-member panel appointed by the chairperson. All commission members have the right to conduct examination of a witness. The hearing must have a record, either by tape, stenographer, or court reporter. The records must be kept for a period of five years.

A decision from a full IPTPC hearing panel of six or more members is a final decision. A three-member panel decision is a proposed decision and may be appealed within 30 days. A notice of appeal gains 15 days to file exceptions to the ruling. Other parties to the decision have 30 days to respond to the appeal exceptions. Time lines may be

extended upon mutual agreement. Twenty days after a final decision, any party may apply for a rehearing.

Analysis of interview information

The IPTPC is made up of nine appointees of the governor. Each commissioner is appointed to a three-year term. They may be reappointed to one three-year term. The commission is composed of four classroom teachers, three school administrators, one member of the Iowa State Department of Public Instruction, and one member of a teacher education institution. It is these educators, and the representatives of the educational professional associations of Iowa, that best know the people behind the history of the IPTPC. And from individual, past and present, members of the IPTPC, to representatives of state professional associations, to the Executive Director of the IPTPC, one impression stands out. Somehow the selection process, attempting to place true professionals in positions of responsibility relating to the education professions, has worked. One cannot help but be impressed with the quality of personnel interviewed as a result of this study.

These individuals became aware of the IPTPC through different formats. Some of the professional organization representatives were around with the original development of the IPTPC concept. Some individual commission members served on the ISEA Commission on Teacher Education and Professional Standards (TEPS). Some IPTPC members learned of the IPTPC and actively sought nomination for IPTPC positions. Most of these individuals have definite feelings about professionalism. Their definitions of professionalism for educators contain a continuing

refrain about the profession being "service oriented" (15, 35). Their definitions also include a role model definition that requires a greater emphasis on total life style, at work and at home, than would be accepted by some jobs. Educators view themselves as in a position of service as a "community example" (35). They also strongly feel that most educators are professionals by their own definitions. They acknowledge a need for continued improvement in this area and express a strong desire to accomplish the goal of their own definitions of professionalism (35).

Overall, interview respondents were somewhat uncertain about their knowledge of the influence of the New Horizons in Teacher Education and Professional Standards on the IPTPC. They were much more aware of the influence of the ISEA Commission on Teacher Education and Professional Standards (TEPS) on the IPTPC (15, 35). However, written records to reflect this influence have all but disappeared.

Widespread agreement exists from professional organization personnel and IPTPC personnel about the significance of specific cases. Recommendations by interview subjects for "landmark case" status were almost always the same for every category. However, the IPTPC members' opinions about the outcomes of individual cases are often at odds with the feelings of professional organization personnel (15, 35). This fact is reflected in the lobbying efforts by some of these organizations over vetoed criteria for contract release and student discipline decisions. Numerous members of the IPTPC reflect a feeling of betrayal by professional organizations on this matter (35).

Interview subjects universally displayed a perception that there is a lack of knowledge on the part of educational professionals when the topic of the IPTPC comes up. A perception exists that there is a greater need on the part of the IPTPC, professional organizations, and teacher preparation institutions to correct this problem. A perception also exists that the teachers of Iowa and their professional organization, the ISEA, have done a better job of informing their public about the IPTPC than any other group (15, 35).

Interview subjects perceived educators as displaying very little desire to limit access to their ranks. This desire was described as economically advantageous but as a position that is contrary to the self-sacrificing and public service attitude of most educators (15, 35). When discussing case concerns, interview subjects strongly reflect this position when describing contractual disputes. The position that professional advancement is not an acceptable excuse for contract release is not very self-serving on the part of these educators. And when discussing when harm begins, after a person leaves a contract, interview subjects strongly felt it began whenever a former teacher is replaced by a teacher of inferior quality. However, interview subjects from the IPTPC members to professional organization representatives depict a dual standard as existing. Teachers increasingly are facing a requirement to fulfill a contract and administrators universally are released. No administrator contract release question has ever been brought before the IPTPC (15, 35). In the area of sexual offenses by educators, the feeling of interview subjects is again professionally

self-sacrificing. A concern of whether or not the offense affects the school environment is cast aside. It is simply expected that educators will not act in such a manner as to bring question upon the group (15, 35).

Procedural matters contain definitions of professional requirements. When interview subjects were asked if it would ever be advisable for a respondent not to appear for a hearing, two groups developed. Representatives for professional groups sometimes indicated that, in the real world, a respondent's manner or demeanor could damage a case, and thus they should not be present (15). IPTPC members usually responded that representation and communication between all parties of a case were important in making professional decisions (35). When asked if a case hearing brought to light new potential charges, this split between groups continued. Original charges were listed as the only appropriate matter of a hearing when interview subjects were representatives of professional groups (15). And while this position was held by some IPTPC members, there was often an expressed desire to use the new information to either form new charges or become part of the record to support other charges and positions (35).

IPTPC members portrayed the need for minority decisions as one that requires a great deal of concern and professional understanding. They admit that publicity of such decisions might cost members of the profession by casting them in a demeaning or derogatory framework. However, they point out that such decisions are infrequent, that the charges made are already damaging, and that such decisions usually

relate to hearing results when the respondent is found to have acted unprofessionally on one or more charges other than those discussed in the minority opinion (35).

One area of the interview sessions created some discomfort for interview respondents. It was their assessment of the role IPTPC Executive Director Don Bennett plays. He was universally viewed as a brilliant person who had contributed a great deal to the IPTPC. Yet, he was perceived by many interview subjects as a person who appears to take professional disagreement personally and to sometimes be partial in his hearing role (15, 35). These perceptions were addressed as problems that sometimes got in the way of IPTPC acceptance and proper functioning. Because of these viewpoints, the concept of further definition of his role through a job description is viewed as appropriate by many (15, 35). Several interview respondents also indicated that they can see some merit to the concept of two positions, legal counselor and executive director of the IPTPC, provided that adequate funding could be obtained (35).

When interview respondents were given time to express feelings about the future of the IPTPC, professional organization representatives expressed concern and reservations about the future of and future role of the IPTPC. This concern ranged from questioning the IPTPC's future existence to current and future directions (15). IPTPC members continue to feel that there is a definite need for the IPTPC and for further visibility and greater funding to accomplish the role for which the IPTPC was created. They also depict a position that the

IPTPC is growing into its role, that of improving the professional status for Iowa's educators (35).

Teacher Preparatory Programs

If professional ethics are to be considered an important element in a group's attempts to attain professional status, it would appear that the teacher preparation institutions would place considerable emphasis on this topic. It would also appear obvious that the Iowa Professional Teaching Practices Commission (IPTPC), charged with the task of enhancing the reputation of the education professions through self-governance and discipline, be included as a program topic in the teacher preparation program of Iowa's teacher certification recommendation institutions. To assess the level at which these positions are or are not true requires an understanding of how Iowa's teacher preparation institutions approach the concepts of a "service ideal," professional self-governance, and professional ethics. In addition, it is necessary to know how these institutions do or do not approach the topic of the IPTPC.

The "service ideal"

When asked if a "service ideal" for educators was a concept incorporated in their teacher preparation program, all 28 institutions responded "yes" (Table 3). "Service ideal" was defined as a professional commitment to performance of a service function to society. This strong position reflects a stated desire by the educators interviewed that

Table 3. Teacher preparatory programs in Iowa (28 institutions)

	Yes (percent)	No (percent)
Present "service ideal"	28 (100)	
Present "professional self-governance"	15 (53.57)	13 (46.43)
Consider professional ethics important	28 (100)	
Topics incorporated in instructional program:		
Contract obligations	25 (89.29)	3 (10.71)
Student discipline	28 (100)	
Moral standards for educators	27 (96.43)	1 (3.57)
Competency and ethical performance standards	24 (85.71)	4 (14.29)
Instruction on IPTPC	5 (17.86)	23 (82.14) ^a

^a"No" respondents often stated this topic was covered by the Student Iowa State Education Association.

teacher preparation students are to be viewed as entering a service profession that requires some sacrifice.

Professional self-governance

The concept of professional self-governance was considered an important part of the teacher preparation program of 15 institutions, 53.57 percent (Table 3). Thirteen, 46.43 percent, responded "no." The concept receives less than a total commitment of importance from

Iowa's teacher certification recommendation institutions. This point also helps to reinforce the reasons for a lack of commitment to an understanding of the Iowa Professional Teaching Practices Commission (IPTPC). The very concept that supports the existence of the IPTPC is not universally viewed as important by Iowa's teacher preparation institutions.

Professional ethics

The concept of professional ethics is considered important by teacher preparation institutions. Twenty-eight "yes" responses were obtained on this point (Table 3). In addition, when specific topics of professional ethics were mentioned, institution representatives responded quite positively about the incorporation of these topics as a structured segment of their teacher education programs. Twenty-five, 89.29 percent, listed contract obligations as a part of their program. Twenty-eight listed student discipline as a part of their program. Twenty-seven, 96.43 percent, listed moral standards for educators as a structured segment of their instructional program. Twenty-four, 85.71 percent, listed competency and ethical performance standards as a part of their instructional program. Interview subjects vigorously supported the concept of professional ethics as a necessary part of their teacher preparation program. Educational codes of ethics were depicted as presented and discussed in Iowa's teacher preparation programs.

The Iowa Professional Teaching Practices Commission (IPTPC)

One question remains. Does the concern for professional ethics presented by Iowa's teacher preparation institutions translate into an understanding of and instruction about the IPTPC, charged with ensuring the public's right to a competent and ethical educator? The answer is a resounding "no." Five, 17.86 percent, of the institutions claimed to include instruction covering the existence of, standards of, and powers of the Iowa Professional Teaching Practices Commission (IPTPC) (Table 3). Twenty-three, 82.14 percent, did not.

Iowa Educators' Understanding of
Professional Self-Governance

The responses of Iowa's educators to the survey instrument were used to develop this analysis of their understanding of professional self-governance issues. The survey responses are discussed within the framework of the statements posed to develop the survey instrument. The concepts behind those statements included Iowa educators' knowledge and understanding of the IPTPC, their views of professionalism and the "service ideal," and their perceived need and willingness to police themselves. A total of 335 responses were obtained.

Survey responses are reported by statement number, number of respondents by group and total, mean of each category of educator, total group mean, analysis of variance F-ratio, and pairs of groups significantly different. Using a 1-11 scale, means are described in the following categories: 1-2.5 = Strong Disagreement, 2.5-4.5 = Moderate Disagreement, 4.5-5.5 = Mild Disagreement, 5.5-6.5 = Indifference or

No Opinion, 6.5-7.5 = Mild Agreement, 7.5-9.5 = Moderate Agreement, and 9.5-11 = Strong Agreement.

Knowledge and understanding of the IPTPC

The total group of respondents had a mean of 8.02 (Moderate Agreement) when it was provided with the opportunity to endorse as correct a fictitious title (Statement 1) for the IPTPC (Table 4). The null hypothesis regarding individual group mean differences was rejected. One group had a mean significantly lower than others. The Department of Public Instruction personnel had a mean of 5.28 (Mild Disagreement). This was significantly lower than the means of teachers, elementary principals, superintendents, and secondary principals. When respondents faced a question about their perceptions on a statement emphasizing how well Iowa's educators know of the IPTPC (Statement 2), a mean of 6.18 (Indifference or No Opinion) was found for the total group (Table 5). The null hypothesis regarding individual group mean differences was rejected. The mean for teachers was found to be significantly lower than the means of elementary principals, secondary principals, and superintendents. The mean of Department of Public Instruction personnel was significantly lower than the mean of superintendents.

It is obvious that name recognition of the IPTPC is lacking among many of Iowa's educators. Department of Public Instruction personnel, who might be expected to have name recognition of the IPTPC, proved to be the only occupational group to indicate overall disagreement with the fictitious title, a mean of 5.28 (Mild Disagreement). When it comes to perceptions of how well educators know of the existence of the IPTPC,

Table 4. The Iowa commission that rules on matters of educational professional ethics is The Iowa Commission of Educational Professional Standards and Practices (Statement 1)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	106	58	48	55	25	25	317				
Mean	7.89	8.44	8.14	9.00	5.28	8.00	8.02				
Standard deviation	2.66	3.56	2.84	2.53	4.37	3.18	3.15				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	28	4	3	3	8	69	11	12	43	22	114
F-ratio - 5.435*											
Pairs significantly different at the 0.050 level: 5-1 5-3 5-2 5-4											

61a

*p < .01.

Table 5. Iowa's teachers^a have knowledge of the commission designed to rule on educational professional standards and practices (Statement 2)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	105	61	49	56	27	24	322				
Mean	4.57	8.11	6.79	7.03	6.44	4.75	6.18				
Standard deviation	3.13	2.89	2.98	3.02	3.00	3.08	3.31				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	37	28	41	11	13	21	14	33	84	19	21
F-ratio - 13.266*											
Pairs significantly different at the 0.050 level:								1-3	1-4	1-2	
								6-2			

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

there is a response indicating a strong lack of name recognition for the IPTPC and an inability to claim that Iowa's educators know of the IPTPC.

The Iowa educators surveyed believe that other educators have not read the criteria of the IPTPC. (Statement 3); responses produced a total group mean of 5.10 (Mild Disagreement) (Table 6). The null hypothesis regarding individual group means was rejected. Significant differences in means were found between the means of university personnel and superintendents; and the mean of teachers and the means of secondary principals, elementary principals, and superintendents. Both groups, university personnel and teachers, had stronger disagreement with the survey statement than the other groups. A statement indicating understanding of the IPTPC criteria of professional standards (Statement 4) led to a group mean of 6.03 (Indifference or No Opinion) (Table 7). The null hypothesis regarding individual group means was rejected. A significantly lower mean existed for Department of Public Instruction personnel than secondary principals and superintendents. Department of Public Instruction personnel had a group mean of 4.14 (Mild Disagreement). It appears that the perceptions of Iowa's educators about knowledge of and understanding of the professional criteria of the IPTPC are not positive. The best overall position statement depicted by those Iowa educators surveyed was one of not knowing what to believe.

Professionalism and the "service ideal"

An attempt to get educators to agree that occupational groups are members of a profession (Statement 5) led to the total group of respondents having a mean of 10.22 (Strong Agreement) (Table 8).

Table 6. Iowa's teachers^a have read the established criteria of professional standards and practices that they are required to conform to (Statement 3)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	105	61	49	55	27	25	322
Mean	4.06	6.44	6.00	5.89	4.11	3.84	5.10
Standard deviation	3.03	3.23	3.33	3.15	2.86	2.51	3.24

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	51	39	52	21	19	25	16	18	50	16	15

F-ratio - 7.578*

Pairs significantly different at the 0.050 level: 6-2
1-4 1-3 1-2

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 7. Iowa's teachers^a understand the established criteria of professional standards and practices that they are required to conform to (Statement 4)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	106	62	49	56	28	25	326
Mean	5.56	7.17	6.06	7.16	4.14	4.80	6.03
Standard deviation	3.26	2.98	3.39	2.80	2.47	2.87	3.19

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	28	32	47	19	15	25	20	21	79	24	16

F-ratio - 6.66*

Pairs significantly different at the 0.050 level: 5-4 5-2

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 8. Teachers^a are members of a profession (Statement 5)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	108	62	50	56	27	25	328				
Mean	10.25	10.50	10.60	10.32	9.92	8.84	10.22				
Standard deviation	2.03	1.14	1.06	1.23	2.03	2.96	1.78				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	3	4	2	0	1	3	11	8	23	36	237
F-ratio - 4.114*											
Pairs significantly different at the 0.050 level: 5-1 5-4 5-2 5-3											

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

The null hypothesis for individual group means was rejected. University personnel had a significantly lower group mean, 8.84 (Moderate Agreement), than the means of teachers, elementary principals, superintendents, and secondary principals. It appears that educators desire to view themselves as professionals. It also appears that the people who train educators, university personnel, view the requirements for professional status as more difficult to attain than other professional groups.

A statement regarding the existence of a "service ideal" for educators (Statement 6), placing service over economic reward, produced a total group mean of 9.02 (Moderate Agreement) (Table 9). The null hypothesis for individual group means was rejected. However, post hoc analysis did not reveal significant differences between any of the groups involved. Apparently, the concept of service to others is a rather universal one among educational groups.

Ethical perceptions

When asked to agree that educators believe in a code of ethics designed to stimulate exemplary performance (Statement 7), the total group mean was 9.44 (Moderate Agreement) (Table 10). The null hypothesis regarding differences in individual group means was rejected. A significantly lower mean was found for Department of Public Instruction personnel than the means of elementary principals and superintendents. An attempt to obtain agreement with a statement regarding involvement in a felony affecting a school environment being unprofessional (Statement 11) produced a total group mean of 10.19 (Strong Agreement) (Table 11). The null hypothesis regarding individual group means was not rejected.

Table 9. Teachers^a place an emphasis on service rendered to others rather than upon economic gain (Statement 6)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	108	62	50	55	27	25	327				
Mean	9.00	9.56	9.40	8.83	8.14	8.36	9.02				
Standard deviation	2.09	1.51	2.05	2.07	2.50	2.39	2.07				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	2	4	10	3	4	12	15	29	85	89	74
F-ratio - 2.810											
No two groups are significantly different at the 0.050 level.											

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 10. Teachers^a believe in a code of ethics designed to stimulate exemplary performance
(Statement 7)

	Groups										
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	Total				
Number responding	108	61	50	56	27	25	327				
Mean	9.42	9.90	9.80	9.51	8.48	8.52	9.44				
Standard deviation	1.41	1.19	1.29	1.41	1.92	2.56	1.57				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	0	3	2	2	0	9	13	31	82	99	86
F-ratio - 5.675*											
Pairs significantly different at the 0.050 level:											
5-3 5-2 6-3 6-2											

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 11. A teacher^a that commits a felony that affects his or her ability to perform in the school environment commits an unprofessional act (Statement 11)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	105	61	50	56	27	25	324
Mean	10.35	10.19	9.92	9.94	10.66	10.12	10.19
Standard deviation	1.39	1.65	2.12	1.61	0.62	1.56	1.58

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	1	1	3	1	4	4	9	5	27	62	207

F-ratio - 1.273

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

A positive statement regarding involvement in a felony not affecting a school environment being unprofessional (Statement 12) led to a total group mean of 8.13 (Moderate Agreement) (Table 12). The null hypothesis regarding individual group means was not rejected.

Educators appear to perceive themselves as believing in a code of ethics. This position is consistent with the position desired by the IPTPC. The survey responses regarding the commission of a felony by educators are also consistent with the feelings of the IPTPC. A stronger agreement exists with a school environment felony being unprofessional than with a nonschool environment felony. This position is consistent with the positions taken by the IPTPC members interviewed for this study (35).

A statement depicting instructional incompetence as an unprofessional act (Statement 14) produced a total group mean response of 8.31 (Moderate Agreement) (Table 13). The null hypothesis regarding individual group means was rejected. A significantly lower mean was found for superintendents than teachers. The overall position is one that is consistent with the position of the IPTPC. The difference in the means of administrators and other educators can possibly be attributed to the questionable wording of the statement. It is possible that the concept of instructional incompetence might be misinterpreted when associated with administrators; administrators might feel that instructional competence does not directly relate to their job functions.

Assignment of an uncertified teacher to a classroom by a school administrator was viewed by survey respondents as unprofessional

Table 12. A teacher^a that commits a felony that does not affect his or her ability to perform in the school environment commits an unprofessional act (Statement 12)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	104	61	50	56	27	25	323
Mean	8.27	8.67	8.08	7.53	7.77	8.12	8.13
Standard deviation	3.37	2.89	3.33	3.42	3.36	3.08	3.26

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	18	14	24	5	13	7	20	17	50	47	108

F-ratio - 0.812

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 13. Instructional incompetence by a teacher^a is an unprofessional act (Statement 14)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	105	60	50	55	27	25	322				
Mean	9.03	7.06	8.06	7.83	9.14	9.00	8.31				
Standard deviation	2.81	3.64	2.88	3.29	2.95	3.25	3.19				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	13	7	33	12	7	9	12	11	52	50	116
F-ratio - 3.989*											
Pairs significantly different at the 0.050 level: 2-1											

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

(Statement 16); the total group mean was 8.58 (Moderate Agreement) (Table 14). The null hypothesis regarding individual group means was rejected. A significantly lower mean was found for superintendents than teachers and Department of Public Instruction personnel. A significantly lower mean was also found for secondary principals than teachers. The position of the IPTPC on this matter is that such an act is a violation of state law and is thus automatically unprofessional. Survey responses indicate that this is the overall position of Iowa's educators. However, the groups that usually make decisions about assignments of personnel, though agreeing overall, have significantly lower means.

The act of misappropriation of school funds (Statement 18) was seen as unprofessional; survey responses produced a total group mean of 10.14 (Strong Agreement) (Table 15). The null hypothesis regarding individual group means was not rejected. Apparently, the concept of misappropriating school funds is seen as unprofessional by all groups of educators, as well as the IPTPC. However, rulings in this area by the IPTPC have had to deal with the difficulty of deciding just when or if misappropriation of funds has taken place. When the act is obvious, the IPTPC has ruled strongly against the educator, a position that is viewed as consistent with the perceptions and desires of Iowa's educators.

Iowa's educators were not sure if actions arising out of anger should constitute an unprofessional act (Statement 20). The total group mean produced in response to this position was 5.90 (Indifference

Table 14. Assignment of a noncertified teacher to a classroom by a school administrator is an unprofessional act (Statement 16)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	102	61	48	55	27	24	317
Mean	9.62	7.44	8.00	7.67	9.70	9.04	8.58
Standard deviation	2.36	3.45	3.47	2.91	2.39	2.56	3.02

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	10	17	10	6	14	14	14	14	47	45	126

F-ratio - 6.957*

Pairs significantly different at the 0.050 level: 2-1 2-5
4-1

*p < .01.

Table 15. A teacher's^a misappropriation of school funds is an unprofessional act (Statement 18)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	104	61	51	56	27	25	324				
Mean	9.82	10.34	10.27	10.05	10.66	10.40	10.14				
Standard deviation	1.96	1.28	1.15	2.09	0.67	1.25	1.64				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	3	1	1	0	4	3	11	10	34	48	209

69c

F-ratio - 1.727

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

or No Opinion) (Table 16). The null hypothesis for individual group means was not rejected. The IPTPC has taken the position that when an educator acts out of anger, he is no longer in control of his or her actions. Thus, particularly in discipline situations, he or she is acting unprofessionally. The rank and file members of the educational occupation groups surveyed have difficulty in accepting this position.

A statement that an educator's use of others for personal gain was unprofessional (Statement 22) produced responses with a total group mean of 7.89 (Moderate Agreement) (Table 17). The null hypothesis for individual group means was not rejected. Survey respondents took a rather strong position in this area and thus are in agreement with the position that is taken by the IPTPC.

The linking of sexual acts with a child to unprofessional conduct (Statement 24) produced a strong reaction from the survey sample. The total group mean was 10.67 (Strong Agreement) (Table 18). The null hypothesis for individual group means was not rejected. Strong feelings existed in this area for all groups of educators surveyed. This position is the one taken by the IPTPC through its rulings and is consistent with the opinions of interview subjects (15, 35).

Making derogatory remarks about others (Statement 26) was seen as unprofessional by the survey sample. The total group mean response was 8.94 (Moderate Agreement) (Table 19). The null hypothesis for individual group means was not rejected. Again, all groups of educators appear to have feelings in this area that are consistent with the position taken in IPTPC rulings.

Table 16. A teacher's^a actions that arise out of anger constitute an unprofessional act
(Statement 20)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	106	61	50	56	27	24	324				
Mean	6.17	5.70	5.52	5.60	6.29	6.25	5.90				
Standard deviation	3.34	3.34	3.16	3.24	3.12	3.03	3.24				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	31	25	57	16	26	23	21	20	51	31	23

F-ratio - 0.561

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 17. Teachers^a that use others for personal gain commit an unprofessional act (Statement 22)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	107	57	50	55	27	24	320
Mean	7.93	7.66	7.92	7.65	7.85	8.79	7.89
Standard deviation	2.74	2.97	2.98	2.92	2.67	2.65	2.83

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	10	8	20	9	14	37	20	25	68	39	70

F-ratio - 0.635

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 18. A teacher^a found guilty of sexual acts with a child is guilty of an unprofessional act (Statement 24)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	108	59	50	56	27	25	325
Mean	10.70	10.88	10.66	10.58	10.88	10.04	10.67
Standard deviation	1.05	0.58	1.15	1.31	0.42	2.37	1.18

Mean Response Scale											
Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement					
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11					
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	1	0	1	1	0	5	7	0	5	18	287

F-ratio - 2.084

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 19. A teacher's^a derogatory comments about students, parents, or other educators are unprofessional (Statement 26)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	109	58	50	56	27	25	325
Mean	8.59	8.81	9.58	8.80	8.96	9.76	8.94
Standard deviation	2.70	2.21	1.73	2.25	2.06	2.06	2.33

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	8	4	8	2	2	11	25	34	75	56	100

F-ratio - 1.943

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Manipulation of the academic process to deal with disciplinary matters was viewed by survey respondents as an unprofessional act (Statement 28). The total group mean was 7.26 (Mild Agreement) (Table 20). The null hypothesis was rejected; however, post hoc testing did not reveal a significant difference existing between the means of any two groups. Again, most educators seem to agree with the IPTPC on this position.

When faced with a statement that nonperformance of a teaching contract is unprofessional (Statement 30), the total group mean response was 9.26 (Moderate Agreement) (Table 21). The null hypothesis for individual group means was rejected. A significantly lower mean was found for teachers, 8.43 (Moderate Agreement), than the means of secondary principals and superintendents. The question of whether or not a teaching contract must be honored without regard to the reasons for requested release (Statement 32) produced a total group mean response of 5.67 (Indifference or No Opinion) (Table 22). The null hypothesis was not rejected. This position is further defined by a group mean response of 7.95 (Moderate Agreement) (Table 23) that personal problems, such as marital and emotional difficulties, can serve as grounds for failure to fulfill a contract (Statement 33). A significantly lower mean was found for university personnel than teachers and secondary principals. The mean of superintendents was significantly lower than that of teachers.

The statement that professional advancement or enhancement of position are justifiable grounds for not fulfilling a contract (Statement 34) led to a total group mean response of 6.14 (Indifference or

Table 20. A teacher's^a manipulation of the academic process; such as teaching procedures or grading procedures; to deal with student discipline matters is unprofessional (Statement 28)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	106	56	48	56	27	24	317				
Mean	6.72	7.46	7.47	6.76	8.14	8.87	7.26				
Standard deviation	3.47	3.06	3.12	3.41	2.69	2.83	3.27				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	20	14	40	5	10	31	20	19	50	52	56
F-ratio - 2.528**											
No two groups are significantly different at the 0.050 level.											

**p < .05.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 21. A teacher's^a nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, is unprofessional (Statement 30)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	107	59	50	56	27	24	323				
Mean	8.43	9.81	9.42	9.69	9.74	9.75	9.26				
Standard deviation	2.97	1.70	2.02	1.77	2.12	1.25	2.33				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	6	6	6	1	5	8	20	22	65	45	139
F-ratio - 4.419*											
Pairs significantly different at the 0.050 level: 1-4 1-2											

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 22. Educational ethics require that a contract be honored, when required by either the educator or the school system, without regard to the grounds for request for release from the contract (Statement 32)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	109	59	50	55	27	25	325
Mean	5.27	6.62	5.40	5.83	5.25	5.80	5.67
Standard deviation	3.40	3.35	3.45	3.31	3.86	3.76	3.46

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	46	27	54	15	25	29	15	9	43	23	39

F-ratio - 1.356

No two groups are significantly different at the 0.050 level.

Table 23. Personal problems; such as marital difficulties or emotional stress; can serve as justifiable grounds for an educator's unilateral decision not to fulfill a contract (Statement 33)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	108	59	50	56	28	25	326				
Mean	8.64	7.03	8.48	8.26	7.39	6.04	7.95				
Standard deviation	2.60	2.91	2.59	2.49	2.97	3.78	2.87				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	11	17	18	4	9	20	24	37	76	44	66
F-ratio - 5.737*											
Pairs significantly different at the 0.050 level:								6-3	6-1		
								2-1			

*p < .01.

No Opinion) (Table 24). The null hypothesis for individual group means was rejected. A significantly larger mean was found for teachers than the means of Department of Public Instruction personnel and superintendents. When asked if personal acts such as contracting marriage could be justifiable grounds for not fulfilling a contract (Statement 35), the total group mean response was 7.17 (Mild Agreement) (Table 25). The null hypothesis for individual group means was rejected. Significantly different means were found between the means of superintendents and teachers, university personnel and teachers, secondary principals and teachers, and Department of Public Instruction personnel and teachers. In all cases, the teachers held stronger agreement with the survey statement, 8.73 (Moderate Agreement).

Mitigating actions such as payment of replacement costs and training and/or locating replacements are viewed by survey respondents as justifiable reason for reducing the severity of punishment for breaking a contract (Statement 36). The total group mean response was 7.50 (Moderate Agreement) (Table 26). The null hypothesis for individual group means was not rejected. The survey responses indicate that, in matters of contract disputes, Iowa's educators are in overall agreement with the positions of the IPTPC. The one probable strong area of disagreement is the strong IPTPC position that professional advancement is not a justifiable cause for failure to fulfill a contract.

Iowa's educators appear to disagree with a statement that a guilty state of mind must exist for an act to be judged unprofessional (Statement 38). This position produced a total group mean response of 3.70

Table 24. Professional advancement or enhancement of position are justifiable grounds for an educator's unilateral decision not to fulfill a contract (Statement 34)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	107	59	50	56	27	25	324				
Mean	7.13	5.30	6.40	6.10	4.18	5.64	6.14				
Standard deviation	3.40	3.37	2.97	3.45	2.64	3.74	3.41				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	38	27	42	13	19	22	24	27	48	25	39
F-ratio - 4.702*											
Pairs significantly different at the 0.050 level:								5-1			
								2-1			

*p < .01.

Table 25. Personal acts; such as contracting marriage and a need to move for marital unity; are justifiable grounds for an educator's unilateral decision not to fulfill a contract (Statement 35)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	106	61	49	55	27	24	322				
Mean	8.73	6.00	7.00	6.43	6.48	6.08	7.17				
Standard deviation	2.71	3.32	3.31	2.96	2.99	3.69	3.25				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	19	15	37	14	17	12	36	24	53	29	66
F-ratio - 8.799*											
Pairs significantly different at the 0.050 level: 2-1 6-1 4-1 5-1											

*p < .01.

Table 26. Mitigating factors; such as an educator's payment of replacement costs, past experience, or training and/or locating replacements; should reduce the severity of any punishment given for a unilateral decision not to fulfill a contract (Statement 36)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	100	60	48	55	26	24	313				
Mean	7.63	6.78	7.66	7.21	8.50	8.08	7.50				
Standard deviation	2.92	3.15	2.96	2.91	2.14	2.82	2.92				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	20	12	21	1	8	26	34	33	77	43	38
F-ratio - 1.705											
No two groups are significantly different at the 0.050 level.											

(Moderate Disagreement) (Table 27). The null hypothesis for individual group means was rejected. Significantly different means were found between the means of university teacher education personnel and secondary principals and the means of Department of Public Instruction personnel and teachers. In both cases, the teachers' position was not as strong in disagreement, 3.90 (Moderate Disagreement). This concept is somewhat legalistic and is a position that disagrees with decisions of the IPTPC.

A statement that an unexpected substitute will unfavorably disrupt a student's educational program (Statement 41) led to a total group mean of 6.32 (Indifference or No Opinion) (Table 28). The null hypothesis for individual group means was rejected. A significantly lower mean existed for teachers than the means of secondary principals and superintendents. This question deals with the concept of "no harm" being done in contract dispute cases. This seems to be an area in which educators are having difficulty in making a position statement. This lack of a position is consistent with the interview and decision statements of the IPTPC (15, 35).

Collective bargaining laws were viewed as increasing the need for Iowa's educators to be concerned with professional ethics (Statement 42); the total group mean response was 8.04 (Moderate Agreement) (Table 29). The null hypothesis for individual group means was not rejected. This position helps to advance the argument that Iowa's educators are growing

Table 27. A guilty state of mind must exist for a teacher's^a act to be judged unprofessional (Statement 38)

	Groups							Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel						
Number responding	103	60	49	55	28	24	319					
Mean	3.90	3.86	3.32	4.69	2.50	2.41	3.70					
Standard deviation	2.82	2.47	2.72	2.72	1.77	1.63	2.64					
Mean Response Scale												
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement					
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11					
Frequency Distributions												
Response	1	2	3	4	5	6	7	8	9	10	11	
Total	83	49	60	19	22	45	5	9	15	8	4	
F-ratio - 4.413*												
Pairs significantly different at the 0.050 level:								6-4				
								5-4				

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 28. If a student's regular classroom teacher is unexpectedly replaced by a substitute, that student's educational program will be unfavorably disrupted (Statement 41)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	105	61	49	55	27	25	322				
Mean	5.36	7.49	6.08	7.09	6.18	6.48	6.32				
Standard deviation	3.24	2.52	3.35	2.67	2.89	2.90	3.07				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	24	23	45	9	11	38	40	32	49	25	26
F-ratio - 4.844*											
Pairs significantly different at the 0.050 level: 1-4 1-2											

*p < .01.

Table 29. Collective bargaining laws have increased the need for Iowa's teachers to be concerned about the establishment and enforcement of professional standards and practices (Statement 42)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	105	61	49	55	26	24	320				
Mean	7.97	8.59	7.10	8.21	8.15	8.33	8.04				
Standard deviation	3.01	2.86	3.77	2.62	2.85	3.19	3.06				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	18	8	18	5	13	28	23	18	55	42	92
F-ratio - 1.416											
No two groups are significantly different at the 0.050 level.											

into an understanding and acceptance of professional standards and practices. Also, this perception can stand in opposition to Myron Lieberman's position that collective bargaining has reduced the desire and need for professional self-governance in education. This is particularly true if we can assume that educators do desire to police their own ranks.

Need and willingness to police educational ranks

Iowa's educators appear to believe that other educators have viewed an act that should be classified as unprofessional (Statement 39); the total group mean response was 8.74 (Moderate Agreement) (Table 30). The null hypothesis for individual group means was not rejected. Iowa's educators seem to feel that numerous unprofessional acts exist. This supports Myron Lieberman's argument that educators, by basis of total group numbers, would logically have many more professional practices complaints than they currently act upon.

A statement that most educators have viewed an unprofessional act that would warrant consideration of suspension or revocation of a teaching certificate (Statement 40) produced a total group mean response of 6.54 (Mild Agreement) (Table 31). The null hypothesis for individual group means was not rejected. This perception supports the idea that unprofessional acts exist in higher numbers than are reported or ruled upon.

There is a perception that professional problems exist and they exist in a perceived level of severity that could possibly require suspension or revocation of a teaching certificate. Thus, the question

Table 30. Most teachers^a have viewed an act by another educator that they would classify as unprofessional (Statement 39)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	105	61	49	56	27	25	323
Mean	8.73	8.40	8.61	8.71	9.22	9.44	8.74
Standard deviation	2.58	2.98	3.00	2.14	2.22	1.52	2.57

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	6	7	15	5	2	19	19	22	74	53	101

F-ratio - 0.784

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 31. Most teachers^a have viewed an act by another educator that they would deem worthy of consideration of suspension or revocation of a teaching certificate (Statement 40)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	104	61	49	56	27	24	321
Mean	5.83	6.81	6.89	7.12	6.96	6.33	6.54
Standard deviation	3.34	3.48	3.41	2.99	3.22	2.63	3.28

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	24	19	42	21	18	33	18	21	47	35	43

F-ratio - 1.640

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

of whether or not Iowa's educators are willing to police their ranks on issues of professional conduct needs to be addressed.

When faced with a statement that educators desire to police their own ranks (Statement 8), the group mean response was 7.71 (Moderate Agreement) (Table 32). The null hypothesis for individual group means was not rejected. Survey respondents were in acceptance of the position that they should police their own ranks, a position that is consistent with the mandated objectives of the IPTPC.

A statement that those educators committing an unprofessional act should have their certificates suspended or revoked (Statement 9) produced a total group mean response of 9.14 (Moderate Agreement) (Table 33). The null hypothesis for individual group means was rejected. However, post hoc tests failed to reveal significant differences between groups. It appears that this position has relatively good support from the different educational occupational groups. This places the legislated power of the IPTPC as acceptable to the Iowa educators included in the survey sample.

If educators desire to limit access to their ranks for social and economic rewards (Statement 10), professional self-governance could be used to attain this objective. The responses obtained for this study disagreed with this belief; the total group mean was 3.79 (Moderate Disagreement) (Table 34). The null hypothesis for individual group means was rejected. A significantly lower mean existed for superintendents than teachers and university teacher education personnel. The mean of secondary principals was significantly lower than the

Table 32. Teachers^a desire to police their own ranks (Statement 8)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	105	61	49	56	27	25	323
Mean	8.15	7.57	7.10	7.57	8.00	7.44	7.71
Standard deviation	2.75	3.01	3.43	3.13	3.15	3.20	3.04

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	16	14	25	12	8	14	19	26	81	57	51

F-ratio - 0.966

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 33. Teachers^a believe that those that commit unethical and/or unprofessional acts should face suspension or revocation of their teaching certificates (Statement 9)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	106	61	49	56	27	25	324
Mean	8.77	9.78	9.06	9.67	9.11	8.20	9.14
Standard deviation	2.65	1.81	2.31	1.51	1.94	2.46	2.25

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	4	6	6	4	7	4	22	35	48	79	109

F-ratio - 3.183*

No two groups are significantly different at the 0.050 level.

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 34. Teachers^a desire to limit access to their ranks in order to gain social and economic rewards (Statement 10)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	106	61	49	56	27	24	323
Mean	4.85	2.62	3.00	2.85	4.14	5.54	3.79
Standard deviation	3.36	1.95	2.81	2.26	2.82	3.33	3.00

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	90	57	58	18	19	16	12	6	24	15	8

F-ratio - 8.993*

Pairs significantly different at the 0.050 level: 2-1 2-6
4-1 4-6
3-1 3-6

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

means of teachers and university teacher education personnel. The mean of elementary principals was significantly lower than the means of teachers and university teacher education personnel. The strongest disagreement in this area came from school administrators. This response seems to contradict the economists' stated concern that educators desire to take this position. This response also agrees with the position of the IPTPC, but is somewhat contrary to the concept of policing entry to professions as expressed by the National Education Association (NEA).

Survey respondents portrayed a belief that an educator's commission of a felony should lead to suspension or revocation of a teaching certificate (Statement 13). The total group mean response was 7.98 (Moderate Agreement) (Table 35). The null hypothesis was not rejected. This position is consistent with the position of IPTPC hearing decisions. However, the prospect of whether that act affects the school situation must be taken into account by the IPTPC.

Instructional incompetence was viewed as representing an unprofessional act that should lead to suspension or revocation of a teaching certificate (Statement 15). The total group mean response was 7.58 (Moderate Agreement) (Table 36). The null hypothesis for individual group means was rejected. A significantly lower mean was found for secondary principals when compared to Department of Public Instruction personnel. The mean of superintendents was significantly lower than the mean of Department of Public Instruction personnel. The overall position of agreement reflects agreement with the position of the IPTPC.

Table 35. The conviction of a teacher^a for a felony should be considered as grounds for suspension or revocation of their teaching certificate (Statement 13)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	103	60	50	56	27	25	321
Mean	8.01	8.23	7.82	7.89	8.03	7.72	7.98
Standard deviation	3.17	2.83	3.22	3.25	2.95	3.06	3.08

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	10	10	28	12	16	17	27	12	48	49	92

F-ratio - 0.155

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 36. Instructional incompetence by a teacher^a should be considered as grounds for suspension or revocation of their teaching certificate (Statement 15)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	102	59	49	55	27	25	317				
Mean	8.16	6.57	7.40	6.38	9.14	8.92	7.58				
Standard deviation	3.15	3.73	3.05	3.27	2.64	2.79	3.32				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	16	13	39	11	13	11	22	19	49	40	84
F-ratio - 5.545*											
Pairs significantly different at the 0.050 level: 4-5 2-5											

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

The differences between groups from school administrators, again, possibly depict confusion on the point of instructional incompetence as related to administrative positions.

A statement that assignment of a noncertified teacher to a classroom by a school administrator should cause certificate suspension or revocation (Statement 17) led to a total group mean response of 5.42 (Mild Disagreement) (Table 37). The null hypothesis was rejected for individual group means. A significantly lower mean was found for elementary principals than the means of teachers and Department of Public Instruction personnel. A significantly lower mean was found for secondary principals than the means of teachers and Department of Public Instruction personnel. A significantly lower mean was found for superintendents when compared to the mean of teachers. Overall, school administrators showed moderate disagreement with this statement and Department of Public Instruction personnel showed moderate agreement. The IPTPC has taken the position that such an act is a violation of statute, thus, it is unprofessional. However, they have never gone beyond the position of reprimand in such cases.

Survey respondents felt that the misappropriation of school funds should lead to certificate suspension or revocation (Statement 19); the total group mean response was 8.67 (Moderate Agreement) (Table 38). The null hypothesis for individual group means was rejected. A significantly lower mean was found for teachers than Department of Public Instruction personnel. The IPTPC takes a position consistent with that of the survey sample.

Table 37. Assignment of a noncertified teacher to a classroom by a school administrator should be considered as grounds for suspension or revocation of the administrator's teaching certificate (Statement 17)

	Groups						Total				
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	105	61	50	55	27	24	322				
Mean	6.58	4.68	4.06	4.16	7.11	6.08	5.42				
Standard deviation	3.46	3.62	2.86	2.79	3.29	3.64	3.47				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	50	33	52	16	28	22	19	10	35	16	41
F-ratio - 8.093*											
Pairs significantly different at the 0.050 level:											
3-1 3-5											
4-1 4-5											
2-5											

*p < .01.

Table 38. A teacher's^a misappropriation of school funds should be considered as grounds for suspension or revocation of their teaching certificate (Statement 19)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	107	61	50	55	27	24	324
Mean	7.86	9.24	8.50	8.80	10.03	9.33	8.67
Standard deviation	3.35	2.65	3.13	3.21	1.97	2.07	3.05

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	10	9	21	8	12	13	15	11	40	39	146

F-ratio - 3.394*

Pairs significantly different at the 0.050 level: 1-5

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Faced with a statement that acts arising out of anger should lead to certificate suspension or revocation (Statement 21), the total group mean response was 4.34 (Moderate Disagreement) (Table 39). The null hypothesis for individual group means was not rejected. It appears that in this area, educators are in opposition to the position of the IPTPC. The possible lack of linking this statement to discipline and harm to students could have affected this information.

Asked if the use of others for personal gain should lead to certificate suspension or revocation (Statement 23), the total group mean response was 5.37 (Mild Disagreement) (Table 40). The null hypothesis for individual group means was not rejected. This position is consistent with the actions taken by the IPTPC in regards to punishment.

The belief that sexual acts with a child should lead to certificate suspension or revocation (Statement 25) produced a total group mean response of 10.52 (Strong Agreement) (Table 41). The null hypothesis for individual group means was not rejected. In this area, statute and IPTPC positions match perfectly with the surveyed opinions of Iowa's educators.

The question of whether or not derogatory statements about others should lead to certificate suspension or revocation (Statement 27) could not be assessed because of a printing error on the Department of Public Instruction and university teacher education personnel survey instrument. However, the other four groups showed a moderate disagreement with this position (Table 42). Punishment in this area by the IPTPC has usually

Table 39. A teacher's^a actions that arise out of anger should be considered as grounds for suspension or revocation of their teaching certificate (Statement 21)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	107	61	50	56	27	24	325
Mean	4.57	4.31	4.22	3.58	5.55	4.08	4.34
Standard deviation	2.91	2.82	2.72	2.30	2.84	2.71	2.77

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	61	31	69	18	33	37	20	17	21	10	5

F-ratio - 2.10

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 40. A teacher's^a use of others for personal gain should be considered as grounds for suspension or revocation of their teaching certificate (Statement 23)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	106	57	50	55	27	24	319
Mean	5.31	5.36	4.94	5.38	5.88	6.00	5.37
Standard deviation	2.91	2.94	2.94	3.02	3.02	2.90	2.94

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	31	19	63	26	32	46	19	16	34	13	20

F-ratio - 1.932

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 41. A teacher's^a sexual acts with a child should be considered as grounds for suspension or revocation of their teaching certificate (Statement 25)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	108	59	50	56	27	24	324
Mean	10.34	10.79	10.84	10.30	10.38	10.16	10.52
Standard deviation	1.86	0.86	0.76	2.04	0.32	1.60	1.53

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	3	0	1	1	2	6	9	2	4	16	280

F-ratio - 1.932

No two groups are significantly different at the 0.050 level.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 42. A teacher's^a derogatory comments about students, parents, or other educators should be considered as grounds for suspension or revocation of their teaching certificate (Statement 27)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	108	58	50	56	24	19	315				
Mean	4.27	4.46	4.52	4.69	8.37	9.68	5.06				
Standard deviation	2.98	2.86	3.18	2.98	2.01	2.31	3.27				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	51	30	64	19	24	18	18	17	39	10	25
F-ratio - 18.520*											
Pairs significantly different at the 0.050 level:								1-5	1-6		
								2-5	2-6		
								3-5	3-6		
								4-5	4-6		

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

been a reprimand, and thus the IPTPC position is consistent with that of the educators surveyed.

Iowa's educators responded negatively to a survey statement that manipulation of the academic process to deal with discipline should lead to certificate suspension or revocation (Statement 29); the total group mean response was 4.86 (Mild Disagreement) (Table 43). The null hypothesis for individual group means was rejected. Teachers had a significantly lower mean than university teacher education personnel. This overall position, that this is an unprofessional act that does not warrant certificate suspension or revocation, is consistent with the usual punishment of the IPTPC in this area, a warning or reprimand.

Nonperformance of a teaching contract was viewed as appropriate grounds for suspension or revocation of a teaching certificate (Statement 31); the total group mean response was 7.37 (Mild Agreement) (Table 44). The null hypothesis for individual group means was rejected. Significant differences were found between the mean of teachers and the means of superintendents and secondary principals. In both cases, administrators felt much stronger on this issue in favor of punishment. This mild agreement position is consistent with the position of the IPTPC decisions in this area.

Certificate suspension or revocation was felt to be too harsh a punishment when no apparent harm is done to students (Statement 37); the total group mean response was 6.94 (Mild Agreement) (Table 45). The null hypothesis for individual group means was rejected. A significantly lower mean was found for superintendents than the means

Table 43. A teacher's^a manipulation of the academic process; such as testing procedures or grading procedures; to deal with student discipline matters should be considered as grounds for suspension or revocation of their teaching certificate (Statement 29)

	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Number responding	107	56	47	55	27	24	316
Mean	4.20	4.83	4.59	5.03	6.03	6.62	4.86
Standard deviation	2.93	2.80	3.16	3.47	2.99	3.22	3.13

Mean Response Scale

Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement
1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11

Frequency Distributions

Response	1	2	3	4	5	6	7	8	9	10	11
Total	52	32	60	19	32	34	12	14	27	13	21

F-ratio - 3.448*

Pairs significantly different at the 0.050 level: 1-6

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 44. A teacher's^a nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, should be considered as grounds for suspension or revocation of their teaching certificate (Statement 31)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	108	59	50	56	27	24	324				
Mean	6.25	8.38	6.64	8.58	7.96	7.91	7.37				
Standard deviation	3.65	3.15	3.45	2.90	3.50	3.42	3.50				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	33	10	28	9	20	21	17	17	47	30	92
F-ratio - 5.598*											
Pairs significantly different at the 0.050 level: 1-2 1-4											

*p < .01.

^aTerm substitution used on survey instrument by group surveyed: teachers, superintendents, elementary principals, secondary principals, and educators (used for DPI and university teacher education personnel).

Table 45. Certificate suspension or revocation is too harsh a punishment for nonperformance of a contract, a unilateral decision to leave a contract position without school board release, if no proven harm is done to students (Statement 37)

	Groups							Total			
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel					
Number responding	104	61	49	55	27	24	320				
Mean	8.50	4.96	7.67	6.32	6.18	6.00	6.94				
Standard deviation	2.81	3.24	3.39	3.03	3.69	3.75	3.42				
Mean Response Scale											
	Strong disagreement	Moderate disagreement	Mild disagreement	Indifference/ no opinion	Mild agreement	Moderate agreement	Strong agreement				
	1-2.5	2.5-4.5	4.5-5.5	5.5-6.5	6.5-7.5	7.5-9.5	9.5-11				
Frequency Distributions											
Response	1	2	3	4	5	6	7	8	9	10	11
Total	37	15	36	14	11	16	32	15	59	30	61
F-ratio - 11.356*											
Pairs significantly different at the 0.050 level:											
2-3 2-1											
6-1											
5-1											
4-1											

*p < .01.

of elementary principals and teachers. The mean of university teacher education personnel was significantly lower than the mean of teachers. The mean of Department of Public Instruction personnel was significantly lower than teachers and the mean of secondary principals was significantly lower than teachers. These positions reflect the confusion educators seem to have regarding this issue. The Board of Educational Examiners has overruled the IPTPC in this area.

Summary

Overall, the positions of the IPTPC appear to reflect those of the educators they represent. A pattern does exist showing a proportionally higher disagreement between two administrative groups, superintendents and secondary principals, and teachers (Table 46). Two areas, contract disputes involving professional advancement and acting in anger while disciplining students, seem to display different overall positions between the IPTPC and the educators it represents. In total, the IPTPC reflects the attitudes of the Iowa educators surveyed for this study.

Developmental History of the IPTPC

The New Horizons in Teacher Education and Professional Standards movement of the 1960s provided the original impetus for educators to become involved in professional standards and professional self-governance. As a result of the direction provided by this movement, the Commission on Teacher Education and Professional Standards (TEPS) of the Iowa State Education Association (ISEA) began work. A goal of TEPS was the establishment of some form of self-direction and

Table 46. Incidence of significant differences between groups

Groups	Groups						Total
	Teachers	Superintendents	Elementary principals	Secondary principals	Certified DPI personnel	University teacher education personnel	
Teachers		14	5	11	7	7	44
Superintendents	14		2	1	7	7	31
Elementary principals	5	2		1	5	6	19
Secondary principals	11	1	1		7	5	25
Certified DPI personnel	7	7	5	7		1	27
University teacher education personnel	7	7	6	5	1		26
Total	44	31	19	25	27	26	

self-policing for the educational professions of Iowa. By 1972, the Iowa Professional Teaching Practices Commission (IPTPC) was a funded and operational unit. However, the 12 years that it took to reach that point depict the sometimes frustrated efforts of Iowa's educational community and the professional associations representing that community.

The efforts of those educators and groups are reflected in the developmental history of the IPTPC and the strong leadership styles that influenced that history.

IPTPC history

The original, ill-fated, IPTPC was never able to overcome a problem that has continued to plague the current IPTPC, adequate funding. The second, and current, IPTPC has faced problems in addition to adequate funding. These additional concerns include attempts to provide structure to the IPTPC, attempts to provide standards for operation of the IPTPC, attempts to set up a peer review program for Iowa's educators, attempts to overcome a problem of dual authority in matters of IPTPC action, and attempts to overcome the difficult problem of informing the public that the IPTPC serves. In addition, the developmental history of the IPTPC depicts the influence of two leadership styles, those of Dr. Dwayne Anderson and Mr. Don Bennett.

Funding Form without function must represent frustration. Legislation was enacted by the 62nd General Assembly of Iowa, in 1967, to establish the Iowa Professional Teaching Practices Commission (IPTPC). The IPTPC first met on 11 December 1967. It met with an immediate problem, the lack of authorized funding. The Iowa State Education

Association (ISEA) attempted to provide initial funding at \$6,743.00, with the expectation that other professional groups would aid in efforts to get the IPTPC functional (34, p. 3). Though this original IPTPC did work to develop professional standards and to investigate charges of unprofessional conduct, it faced a fatal funding problem. The Attorney General of Iowa ruled that professional organizations could not provide the funding of the IPTPC. Legislation existed; funds did not exist. The original IPTPC found form without the ability to function. It soon proved that such an arrangement was fatal to effectively providing self-direction for the educational professions of Iowa.

In 1972, the Iowa Professional Teaching Practices Commission (IPTPC) was resurrected with a state appropriation of \$30,000 through 1973. Funding for the IPTPC came about through a desire of educators to fund the IPTPC and an expressed desire to raise the cost of teaching certificates from \$3.00 to \$15.00 to fund it. A full commission was appointed and action begun to set standards of professional practices. Thus, the problem of funding for the original IPTPC was overcome with the help of Iowa's educators. However, this arrangement did not end the concerns for funding or the way the funds were generated.

The problems of funding were again addressed on 4 October 1974. The IPTPC had learned that the 65th General Assembly had authorized \$20,000 for the 1973-1975 period. George Brown of the Iowa State Education Association (ISEA) stated that the \$30,000 originally authorized for the IPTPC was only an estimate of the increased monies expected from additional costs for teaching certificates and that this

money was to be used to fund the IPTPC and its staff. A problem existed in that the funds raised were far more than those allocated, as shown below:

<u>Incomes</u>	<u>Expenses</u>
1969 - \$ 31,082	
1970 - 37,400	
1972 - 38,892	1972 - \$2,669.45
1973 - 223,430	1973 - 3,334.65
1974 - 195,114	1974 - 7,594.64
1975 - 181,410	

(34, p. 51).

The legislative position was that funds obtained from teaching certificates were under legislative control and were not committed to the IPTPC. The legislative position prevailed but not without resentment on the part of many educators and members of the IPTPC (35).

Structure From the start, it was believed that two groups were necessary for educators to act in a proper manner concerning professional self-control and self-policing. One was a professional practices commission composed of educators that would deal with standards and practices, professional competence, and disciplinary action. The second was a professional standards board that would develop the requirements and policies governing accreditation of teacher education institutions, issuance of licenses, assignment of professional personnel, and conducting studies to improve standards.

The IPTPC decided to use the Nebraska Commission as a model from which to develop their own rules and policies. The Nebraska Commission, under the direction of Mr. Max Dryer, had received some considerable influence from the work of Hans J. Schacht with the Georgia and Florida

commissions. The 1970 Code of Ethics of the Education Profession was adopted as a model for the Iowa criteria of professional practices.

Standards On 6 October 1972, the IPTPC proposed a set of rules. On 17 November, the Attorney General's office authorized the IPTPC to begin to hold hearings, though the rules had not yet been formally approved by the Legislative Rules Committee and thus educators did not have the opportunity to know the standards upon which they were to be judged (34, p. 17). The first case hearing was held on 17 November. It involved a superintendent, Mr. Trumpeter. An immediate review was conducted to see if the IPTPC had exceeded its authority in this case. A court challenge appeared to be mounted, and with follow-up investigations, it was decided that the case would demand only a reprimand, and notice was provided Mr. Trumpeter.

By 6 April 1973, the Legislative Rules Committee had approved the IPTPC rules with some exceptions. An amended rules statement was accepted by the Legislative Rules Committee and reported as such at the 22 June 1973 IPTPC meeting. It was at this same meeting that Dr. Anderson, Chairman of the IPTPC, stated that the IPTPC must make it clear that it is not an arm of the Iowa State Education Association (ISEA) (34, p. 28). The IPTPC formally had its own standards and role to play. It desired to sever any client support suggested by the original attempt to fund the IPTPC.

On 13 May 1976, criteria for competent performance were reviewed and set for notice in the Iowa Administrative Code. Objections were raised as to the vagueness of the rules by the ISEA and Mrs. Doris

Mauer, a Cedar Falls educator. The proposed competency rules were set before a public hearing and produced testimony from the Iowa Association of School Administrators (IASA), the Iowa Association of School Boards (IASB), the Iowa State Education Association (ISEA), the Des Moines Education Association (DMEA), the Iowa Association of Secondary Principals (IASSP), the Iowa Association of Elementary School Principals (IAESP), and Mrs. Doris Mauer. The rules were adopted by the IPTPC on 23 September 1977.

As a result of facing numerous issues on corporal punishment and student restraint, and contractual obligations, the IPTPC proposed rules to cover these areas. On 18 September 1980, the IPTPC took final action on "Chapter 5 - Contracts" and "Chapter 6 - Corporal Punishment." Prior to this time, IPTPC Executive Director, Mr. Don Bennett, stated that the IPTPC had spent too much time on the topic of contract disputes and that the issue had assumed too great a significance. Concerns in this area were heightened by the State Board of Educational Examiner's review of IPTPC case Parkersburg versus Altman, 79-7. The Board of Educational Examiners had decided that certificate suspension was too harsh when no apparent harm was done to the school district. Mr. Bennett suggested that in contract cases, if a sanction is indicated, a reprimand be issued. He also suggested a possible voluntary surrender of certificate for a specific period of time. Concerns in this area were further heightened when on 2 December, Governor Ray vetoed IPTPC contract and discipline rules. This action was taken, in part, as a result of very intense lobbying effort on the part of the Iowa Association

of School Boards (15, 35). On 29 January 1981, the IPTPC faced a motion to abolish all contract rules. It was defeated by a five to two vote (34, p. 146).

Peer review The concept of peer review by educators was given considerable attention by the IPTPC, and to this day is felt by many of its former members to be one of the answers to self-policing the education professions (35). Such a program was used in Nebraska. It was designed to counsel and improve educators and to also isolate those that proved unable to master the craft, thus effectively removing them from the profession. It was felt by some that such a program was too disciplinarian in appearance for Iowa's educators. The IPTPC decided that it was obligated to further explore peer review. It was at this time that Senate File 205, the "... so called fair dismissal bill ...," was proposed (34, p. 74). It offered the possibility of further definition of the role of the IPTPC. The ISEA took the position that peer review was inappropriate as long as teachers do not have job security. Dr. Lyle Kehm, speaking for the Iowa Association of School Administrators (IASA), stated the IPTPC role should not include peer review, an appeals board on contract issues, a standards board, or a hearing body on issues of competency (34, p. 74). The final passage of Senate File 205 saw no role definition for the IPTPC. However, a separate bill gave the IPTPC the responsibility to appoint hearing officers to handle administrator contract disputes. The concept of peer review soon faded from IPTPC discussions, though not from the professional and conceptual thoughts of IPTPC members (35).

Dual authority A problem of dual authority in the ruling over professional practices was discussed at the 5 April 1974 IPTPC meeting (34, pp. 41-42). It was pointed out that the State Board of Educational Examiners can hear cases dealing with professional practices without the IPTPC being involved and that county superintendents may still legally revoke teaching certificates. The IPTPC found itself serving in an advisory capacity. This position placed the IPTPC's role in some doubt as to their authority in dealing with professional standards and brought forth questions about its role of attempting to provide professional self-governance for educators. On 6 September 1974, the problem was discussed again with reporting of the fact that the State Board of Educational Examiners, when reviewing IPTPC hearing recommendations, were accepting more evidence and witnesses than the IPTPC had heard in its original hearing (34, p. 47).

Executive Director Don Bennett sought an Attorney General's opinion in 1981 to prove that the IPTPC position was more than advisory in dealing with the State Board of Educational Examiners. A more relevant role was given to the IPTPC in the certificate process when the Attorney General's opinion ruled that the IPTPC hearing record and decision must be the record of review. No new evidentiary hearing could be conducted. Don Bennett further argues that while the Board of Educational Examiners may have original jurisdiction in moral fitness issues because of Chapter 260, Section 23 of the Iowa Code, the IPTPC has original jurisdiction in areas of contracts and competency (4). This position places the IPTPC in an area of more

control of its own role in providing professional self-governance and self-policing for Iowa's educational professions.

Informing the public The judgment that Iowa's educators have too little understanding of the IPTPC, its rules, and its function appears to be readily accepted by all parties involved (15, 35). The IPTPC has attempted to address this problem in several ways. They include attempts to produce and disseminate printed information about the IPTPC and to conduct informational workshops on the IPTPC.

The problem that a lack of need to know about the IPTPC is often used as an excuse for a lack of knowledge seems inconsistent with the topic. Professional ethics should be a concern for every Iowa educator. The IPTPC finds itself in a never ending battle of trying to impress this point upon its public while at the same time working with a case load that offers almost no time to educate. Its staff includes one full-time employee, Executive Director Don Bennett, and one part-time employee for office help. IPTPC members are practicing educators. This time problem, added to perceived inadequate funding, places the IPTPC in an almost impossible position.

The IPTPC has attempted several times to provide printed materials to its public. As early as February 1972, it prepared news releases about the IPTPC for state-wide release through Department of Public Instruction channels. By 1973, it had prepared and produced, with Department of Public Instruction assistance, a 16-page pamphlet. The Department of Public Instruction distributed copies to every school district and to every clerk and office of each court. The Iowa State

Education Association attempted to distribute 10,000 copies at their state convention. As late as June 1983, the IPTPC was again publishing an informational pamphlet to inform the public of its existence and responsibilities and commenting upon a need for informational workshops on the IPTPC.

This position is nothing new. The IPTPC has often viewed it as important to inform the public through workshop sessions. As early as 1974, Dr. Anderson was making presentations to Iowa's superintendents. Attempts to encourage the teaching profession to be more professional in their relations with students and other educators through workshops about the IPTPC were described as a "must" by the IPTPC in 1974 (34, p. 61). And though such workshops were scheduled, reception was mixed. In 1975, some discussion took place concerning the teaching of required courses of professional practices, competency, and ethics at Iowa's teacher preparation institutions. These discussions led to a stated desire that greater education in-service on the topic be conducted and a suggestion that teacher preparation institutions hand out a copy of IPTPC rules with diplomas (34, p. 61).

The history of the IPTPC attempts to provide education on its job functions and standards can best be described as "catch as catch can." A lack of money and time gets in the way of the IPTPC's attempts. Thus, Iowa's educators continue to have too little knowledge on this topic.

IPTPC leadership The IPTPC has benefited from the guidance of two strong leaders, Dr. Dwayne Anderson and Mr. Don Bennett. These leaders guided the IPTPC through its role development as a practices

commission, its development of standards, and its attempts to establish a peer review program for Iowa's educators. They lived with and fought to overcome IPTPC problems of funding, dual authority, and educating Iowa's educators about the IPTPC.

The former presence of Dr. Dwayne Anderson as the IPTPC Chairperson, from 25 January 1972 to 17 December 1976, perhaps helps to explain the IPTPC's continued existence. In interviews, he is described as a "dynamic force" and "... the greatest influence on the IPTPC" (13). Dr. Anderson guided the IPTPC through its formation and adoption of rules. His guidance is credited by many for the final acceptance of the IPTPC standards by the Legislative Review Committee after 14 hours of heated debate (35). But more than that, he provided the IPTPC with two vital needs. The first was an example of a strong professional willing to devote time and energy to what he viewed as an important cause. It is not a small compliment that former IPTPC members state the existence of the IPTPC rests largely upon the "largess" of Dr. Anderson (13, 35). The second initial need provided by Dr. Anderson was a point of view, a perspective from which to view the profession. He served on the National Standards and Practices Commission as Vice-President. He viewed such bodies as ruling on "... judgement based on professional expertise rather than law" (2). He understood that morality is not absolute. He saw the professional need to educate on the topic of professionalism, but he understood that you could not mandate it. He describes the teaching of professional standards to educators as "... more than a course -- it is an attitude about. Other

professions weave it in informally" (2). Dr. Anderson, though he respected the law, understood that professionalism is more intangible to define. If something was "... wrong professionally, by golly it was wrong even if you couldn't prove it" (2). Perhaps the best description was given by the IPTPC's second strong leader, Executive Director Don Bennett. He states that Dr. Anderson provided the IPTPC with a "... common sense background" (5). That background was an apparent case of the right man in the right place at the right time.

On 12 July 1974, the IPTPC discussed the need to hire a full-time executive secretary. On 4 October, the decision was made to hire a full-time executive director, and on 10 January 1975, the position of IPTPC Executive Director was offered to Mr. Don Bennett, an attorney, at a salary of \$18,500 a year (34, p. 57). Mr. Bennett brought an extensive legal service background to the job. He had served under Attorney General Robert Kennedy on the national level and two Iowa Attorney Generals on the state level. He is described by those who have worked with him as having a "... brilliant legal mind" (35). He has been willing to go to great efforts to make the IPTPC fulfill the role for which it was created. And his legal opinions have strengthened the position of the IPTPC. He takes pride in the fact that things done well under his direction are those required by statute and the written records of standards and hearings for the IPTPC. It is a pride that is suggested as proper by those he has worked with. He is described as a man that gave the IPTPC "... confidence, starch, and a better understanding of the law" (13). The hearing records are constantly

referenced by those he has dealt with as being greatly upgraded under his direction (35).

Don Bennett obviously is and has been a strong leader for the IPTPC. As he states, "I do everything ... even paying the telephone bill" (5). Mr. Bennett's large role and the strengths he provides the IPTPC are the grounds for the few questions that are sometimes raised about his leadership. His legal background sometimes leads him to hold positions that are not easily accepted by "common sense" educators. They are sometimes described as "legalistic" (15, 35). For instance, his opinions on corporal punishment are far more stringent than those of most educators. Don Bennett, with excellent legal support, views any intrusion, without permission, upon the body of another as a potential assault (5). In addition, Don Bennett, in his role as legal advisor of the IPTPC, is sometimes accused of being partial in his hearing actions.

A charge of partiality was addressed by the IPTPC on 21 April 1978. Mr. Bennett offered his resignation. It was rejected by a 7-0 vote, but one IPTPC member stated that there may be warrant in the objections that raised the issue that deserve attention (34, p. 106). Mr. Bennett is also depicted by some as taking professional matters too personally (15, 35). A position by a professional organization or individual is described as subject to interpretation by Don Bennett as working against him and the IPTPC (15, 35). But this is, perhaps, not that hard to understand. Because of staffing and budget limitations, Don Bennett often is the IPTPC. Commission members have part-time functions for

the IPTPC; Mr. Bennett's functions are full time. Commission members described him as the one continuous fact of the IPTPC (35). It would not be unexpected that such a position would almost force a person to view personal interest in IPTPC business. Indeed, Don Bennett recognizes these concerns and when addressing the purpose of the IPTPC says that the "... concept is a good concept. But as a personal aside, I don't know that I am the individual to boost that concept. The IPTPC as currently set up and funded can not attain the 'esprit de corps' ..." necessary among the educational professions of Iowa.

It appears obvious that the Iowa Professional Teaching Practices Commission (IPTPC) has been served by two influential and dedicated individuals. The two together represent a common sense and legalistic approach. Both individuals have tremendously influenced the IPTPC and both deserve tremendous recognition for their contributions to Iowa educators' attempts to attain professional status. Though this study depicts the history of the IPTPC through 1982, it must note that during October 1983, Mr. Don Bennett resigned from his position for health related reasons.

History of Rulings of the IPTPC

Since 1972, the IPTPC has conducted hearings and ruled upon cases that can be categorized under the following groupings: sexual offenses, contract disputes, student discipline, misappropriation of funds, professional incompetence, and administrative malpractice. Though these groupings are not mutually exclusive, they are used to provide a case history of the IPTPC through decisions that will be considered

as landmark. Status as a landmark decision was obtained through nomination of cases by interview subjects and this author's selection of cases from reading all the cases ruled upon by the IPTPC. However, no case obtained a description as landmark without nomination of a majority of interview subjects. A landmark case is defined as an IPTPC ruling that set a direction, tone, or decision that was of such importance as to affect all consequent cases dealing with complaints of similar offenses. Sixteen cases are so defined and discussed.

In addition to these landmark cases, a complete history of cases exists that reflect supporting and concurring decisions. The total case record is cataloged (Appendix T). This catalog includes the case number, school and respondent involved, IPTPC action on the case, and the type of case. This catalog represents the total case history records of hearing reports and the IPTPC official minutes.

Sexual offenses

Sexual offenses are not discussed in detail in hearing reports as the cases are usually accompanied by a court hearing record along with a request for suspension, voluntary surrender, or revocation of a teaching certificate. Commission criteria states that it is unprofessional for a member of the teaching profession to be guilty of "sexual conduct with or toward minor students ..." (36, p. 23). While these acts relate directly to school situations, most members of the IPTPC have and do personally feel that any sexual misconduct is an unprofessional act whether or not it affects the school situation in any way (35). Though this position may cause questions of legality, it

reflects an attitude on the part of educators that sexual misconduct has no place in the realm of an educator's life style.

Contract disputes

The area of contract disputes is the one that has caused the most concern and case load for the IPTPC. Interviews with commission members and association representatives provide this area with the most contrast and discussion. Attempts to write a set of rules to cover this area led to a veto by Governor Ray.

An early concept of the IPTPC was that failure to fulfill a contractual obligation is a violation of the law and an unprofessional act. Early on, the IPTPC decided that an excuse of professional advancement was not justifiable cause for breaking a contract. For such an act to be allowed, some sort of mitigating factor, or factors, must be present. These include the availability of or willingness to train a replacement, payment of replacement costs, and school contract release policies. A landmark case in this area was Case Number 77-19, Area I Vocational Technical School, Complainant versus Thomas Lindahl, Respondent (Appendix D). In this case, the respondent requested release from a contract in order to move his wife, a medically suggested move supported with documented medical evidence. Release was granted with condition of finding a suitable replacement. Mr. Lindahl departed prior to Area I finding a replacement and agency complaint was initiated. The IPTPC ruled nonperformance because of personal or family illness is excused. Thus, the IPTPC voted 6-0 to dismiss the case. Charles Joss, chief

administrator of Area I, filed a complaint of partiality against the IPTPC Executive Director, Don Bennett (20).

In Case Number 79-7; Parkersburg Community School, Complainant, versus David Altman, Respondent (Appendix E), the IPTPC ruled that since the school system did not release Altman based upon finding a suitable replacement and did not discriminate in its actions, the act of breaking a contract was unprofessional. Certificate suspension was recommended through 30 June 1981 (23). This case is a landmark case because of the action of the Board of Educational Examiners. Because the school board had released the respondent to be able to find a replacement and no proven harm could be attributed to the school district, the decision of the IPTPC was overruled. This act introduced the concept of "no harm" being done to contract disputes. In essence, certificate action was too severe a punishment when no proven harm was shown to the students of the district. However, in response to this idea, most IPTPC and education association interview subjects suggest that harm begins the moment a more experienced teacher is replaced by a new teacher (35, 15).

Student discipline

The area of student discipline was one of the areas in which rules were written that led to a veto by Governor Ray.

A landmark case in this area led to dismissal with censure. It was Case Number 77-10, Mr. and Mrs. Clarence Bergman et al., Complainants, versus Leon Kirchhoff, Respondent (Appendix F). The charges included denying use of notes to some students during a final exam, using

derogatory and humiliating names for students, and using class failure as an unprofessional act. The IPTPC concluded that "Manipulation of the academic testing process to deal with student disciplinary problems is conceptually erroneous as an educational goal and professionally impermissible as a ruling of this commission" (19, p. 3). On the use of names, the IPTPC ruled "... the use of language which can convey a negative image to students is professionally improper" (19, p. 4). The problem of numbers of failures was dismissed as a school board concern.

Perhaps the most important case dealing with student discipline was Case Number 79-1, Ann Crowley, Teacher, Urbandale Schools, and Parent of Michael Patrick II, Complainant, versus Dennis Yoshimira, Respondent (Appendix G). In this case, an Urbandale student on a moped was chasing a nine-year-old in a neighboring school's parking lot. Respondent took the student to the school forcibly and in the building forced the student against a wall, causing laceration. In a lengthy legal discussion of corporal punishment, the point is made that "... physical intrusions upon a student arising not out of a purpose to correct or discipline but rather resulting from malice, passion, rage, or anger are not privileged and in fact are unlawful" (22, p. 11). A formal reprimand was issued with a follow-up procedure by the IPTPC. It was ruled that, "Insofar as educators can command, a student may only be punished within an appropriate context and only in a reasonable and moderate fashion and without serious or lasting injury and only for the purpose underlying the corporal punishment rule" (22, p. 19).

Case Number 79-5, Robert Kempe, a parent of Roberta Kempe, Complainant, versus William Raisch and Jack Rockwell, School Administrators, Van Meter Community Schools, Respondents (Appendix H) revolves around an unsubstantiated charge of drug use on a music trip and a supposed lack of due process. A lottery type of accusation system was used. If your name was mentioned as doing wrong too many times, you were punished. The majority decision issued a reprimand to the two administrators. A minority opinion was filed by commissioner Marilyn Williams, who would have taken suspension action.

In Case Number 80-17, Sue Torres and Juanita Armstrong, Complainants, versus Roger Aceto, Respondent (Appendix I), a school administrator is accused of referring to a student wearing a shirt that appeared to read "Super Spic," but in reality reading "Super Special," as "Spic" (27, p. 3). The IPTPC concluded, "It is never professionally permissible for a member of the teaching profession to make personal reference to students in a demeaning flippant, cute, derogatory or other negative manner" (27, p. 8). The IPTPC added that "... there are no circumstances when it is professionally permissible to make a personal reference to a student by use of a racial or ethnic term that is commonly accepted as demeaning and offensive" (27, p. 10). A warning was issued to the respondent in this case.

In Case Number 82-18, Meridee Mahan, Complainant, versus Joan Kollmorgen (Appendix J), a charge of striking a student with a book is made. This striking was said to cause headache and nausea. The IPTPC ruled to dismiss because they could find no "... culpable intent or

other than the use of minimal force" (32, p. 7). In doing so, the IPTPC stated:

We are aware, however, that in relation to issues of student management many educators, like respondent, commonly believe that numerous kinds of nonprivileged bodily intrusions are permissible and are substituted in lieu of verbal directions. Though imprudent to hazard a definitive list, other examples might be pulling or yanking a head up by the hair or jabbing at the body with pencil or other such object. The uncomplicated part is, that apart from privileges to defend, protect, corporally punish and restrain, the use of other force against a nonconsenting student is suspect (32, p. 7).

A dissent to the reprimand and warning given was written by commissioner Marilyn Williams and agreed to by commissioner William Hanneman.

Misappropriation of school funds

In the area of misappropriation of school funds, one case will be discussed in detail under Administrative Malpractice, Case Number 76-5. In this case, items were purchased for personal use in the school's name. This case and Case Number 77-7, Westfield Community School District, Complainant, versus William Rohlman, Respondent (Appendix L) provided the basic approach to be taken for misappropriation of funds hearings. In this case, a teacher used funds to cover personal debts. In both of these cases, evidence could not prove intent to forever deprive the school of the funds. Thus, certificate action was not involved.

One case stands out above all others in the area of misappropriation of school funds. It is Case Number 80-13, Lewis Central Education Association, Complainant, versus Clarence Miles, Respondent (Appendix M). This case included incidents of converting school funds to

personal use. They included use of school funds to purchase a fireplace, a door opener, and lack of returning funds from an unused airline ticket and a refund from a returned television. The IPTPC recommended that Clarence Miles, a school administrator, have his teaching certificate revoked.

In and as a result of these cases, the IPTPC ruled that it is "... unprofessional and in violation of school law and taxing statutes for an educator to satisfy private obligations by intentionally using employer or student funds" (26, p. 6).

Professional incompetence

One case best fits this category. That case is Case Number 81-1, Muscatine Community School District, Complainant, versus Fred Blaskovitch, Respondent (Appendix N). Charges of incompetency, insubordination, and other unprofessional teaching practices and attitudes were leveled against Mr. Blaskovitch. In a 31-page decision, the IPTPC made the point that "Not only must an educator possess legal qualifications to teach (paper authority), he or she must be qualified in fact" (28, p. 14). The IPTPC stated that its purpose "... is to protect the public against incompetent or unfit teachers and to assure proper educational qualifications, personal fitness, and a high standard of teaching performance" (28, p. 14). Iowa precedence stated, "... revocation must be related to 'unfitness to teach,' Erb vs. State Board of Public Instruction, 216 N.W. 2d 339, 343-344 (Ia. Sup. Ct.-1974)" (28, p. 17). Certification revocation action was defined as proper when harm was shown to the school. "Under Code Section 260.23

a certificate can be revoked only upon a showing of a reasonable likelihood that the teacher's retention in the profession will adversely affect the school community" (28, p. 17).

This case also discussed Blaskovitch's actions relating to a contract dispute involving him at Ar-We-Va. The final ruling of the IPTPC was that Blaskovitch "... is currently professionally unfit to practice education" (28, p. 30). The IPTPC, on the basis of the professional incompetence charge, recommended indefinite suspension or revocation of the respondent's teaching certificate. The State Board of Educational Examiners suspended Blaskovitch's certificate until 30 June 1984, overruling the recommendation of the IPTPC. This fact is an outstanding sore point between the IPTPC and the State Board of Educational Examiners (35).

Administrative malpractice

There have been numerous cases dealing with administrative malpractice. Several deserve landmark status.

In Case Number 76-5, Dorothy Beatty et al., Complainants, versus Harvey Chauvin, Superintendent, Shellsburg Community School District, Respondent (Appendix K), Mr. Chauvin was charged with misconduct toward teachers, staff, parents, and citizens; filing of distorted evaluations; misappropriation of funds; and miscellaneous budget problems. This hearing took six days to complete. It was found that the respondent did act in an unprofessional manner toward others. The IPTPC did not pass judgment on the last three charges. A reprimand was issued.

In Case Number 78-8, Plainfield Education Association by Kay Shook, Complainant, versus David Lau, Superintendent, Plainfield Community School, Respondent (Appendix O), several charges of administrative malpractice were addressed. They included misuse of a student teacher, censorship of a school publication, changing school insurance coverage, study hall and extra duty contract additions, and attempting to harass and cause dismissal of a staff member. The issues of student publication censorship, insurance change, and contract issues were dismissed. The issues of use of a noncertified teacher and harassment to dismiss were upheld. The Iowa Professional Teaching Practices Commission (IPTPC) ruled, "... it is not professionally permissible under our rules to knowingly permit, allow or use a noncertified person to teach" (21, p. 14). The IPTPC added, "... it is professionally impermissible for an educator to use the termination process out of a motive of retaliation for past actions, seemingly not as independent legal grounds" (21, p. 15). Commissioner JoAnn Burgess wrote a minority opinion on the censorship and contract issues. The final decision was to reprimand on the student teacher and harassment issues and to dismiss other issues.

In Case Number 80-12, Joyce VanRoekel, Parent, Complainant, versus Delmar Cram, School Administrator (Appendix P), a charge of issuing demeaning information was made. Comments in a staff memo made points such as,

Barbara Johnson, 16 times [absent from] Government ...
Married - 'upset stomach' (something she ate). Obviously
she has problems which weren't school initiated. I don't
think ... (Cram concedes he knew Johnson was pregnant when

he drafted this comment). SaBelle Smith ... 12 [absences] - maternity leave (not school initiated) (25, pp. 1-2).

The IPTPC made the point that:

It is never justified under any circumstances for educators at any level to cast their own and other students in a demeaning or derogatory framework. Such has the propensity to contaminate the educational purpose; to stigmatize the student in the eyes of other educators; and to mark the student for possible 'different' treatment (25, p. 4).

The IPTPC action was to warn, with dissenting commissioners wanting further punishment.

In Case Number 81-4, Mar-Mac Education Association, Complainant, versus Craig McIntosh, School Administrator, Respondent, six episodes of unprofessional conduct were charged. The issues involved extra school conduct being placed in the realm of evaluation, interference with an educational association meeting, and free speech issues. The IPTPC ruled that "... to use the evaluation process as a means of censure, proscription and retaliation against most out-of-school conduct ... is unprofessional" (29, p. 4). The IPTPC concluded, "It is especially necessary, because of the superior position of an administrator that he or she refrain from inequitable treatment of staff members" (29, p. 18). The IPTPC issued a reprimand and warning to Craig McIntosh.

In Case Number 82-7, Iris Kaufman, Complainant, versus Phillip England and Del Colburn, Administrators, Benton Schools, Respondents (Appendix R), the complainant was suffering from mental illness. Upon discussion with school administrators, the complainant offered, withdrew, and offered again her resignation. The board of education

accepted the resignation. A desire was expressed to withdraw the resignation again. The Iowa Professional Teaching Practices Commission (IPTPC) issued a warning against the respondents.

In Case Number 82-17, North Polk Education Association, Complainant, and Richard Shockey, Respondent (Appendix S), a charge of sexual harassment is made against a school superintendent. Before the IPTPC ruled, Richard Shockey voluntarily surrendered his teaching certificate. No hearing was held. At this writing, he is attempting to regain his certificate.

Analysis of Ethical Standards

The Iowa Administrative Code lists the standing rules and practices for educators in Iowa (Appendix C). In the area of professional practices, three categories are developed: contractual and legal obligations; conviction of crimes, sexual and immoral conduct with or toward students and alcohol or drug abuse; and ethical practice toward other members of the profession, parents, students, and the community. In the area of competent performance, nine categories are developed: administrative and supervisory requirements, analysis of individual needs and individual potential, instructional procedures, communication skills, management techniques, competence in specialization, evaluation of learning and goal achievement, human and interpersonal relationships, and personal requirements.

These standards are reviewed from two viewpoints. The first is an analysis of the written standards of the Iowa Professional Teaching Practices Commission (IPTPC). The second is a development and description

of the operational standards used by the IPTPC in handling professional practices complaints.

The written code

Though such has been attempted by the IPTPC, it is difficult before the fact to develop a code of ethics that will fit a profession. The practices, standards, and policies of the Iowa Professional Teaching Practices Commission (IPTPC) reflect this difficulty. Those standards, when reviewed using the suggested criteria for effective codes of ethics, prove the point. The difficulty of developing such a code is enlarged by the fact that the IPTPC, as a body, represents a curious blend of professional and state control over the teaching profession. A violation of the law per se "... constitutes a violation of the criteria of the Iowa Professional Teaching Practices Commission" (36, p. 22). However, working professionals can find situations in which a violation of a law appears professionally justified. The IPTPC has faced this problem and has stated that such a violation is not necessarily a violation of professional practices. One such situation involved a contract dispute. A teacher felt a need to move because of the medical needs of his wife (20). He left before permission was granted. Thus, he violated the law of Iowa regarding the honoring of a contract. The IPTPC, acting in its professional role, upon review of the case situations, felt that compliance with state law in this case would be unjust. This position would appear to be in agreement with the criteria for codes of ethics that they "... must avoid insisting upon unreasonable standards of behavior on the part of the

practitioners" (40, p. 417). Yet, this same situation places commission rules in question. "A code must be clear" (40, p. 417). The standards of the IPTPC do not state that the law must be obeyed, except in the following situations. It simply states that the law must be obeyed. The IPTPC itself has felt the need to make this statement. It wrote rules regarding contract disputes to reflect the professional positions it has taken during hearings. These rules were vetoed by Governor Robert Ray before they could become adopted.

The matter of clarity of any code of ethics or standards is one that creates numerous difficulties with the published criteria of professional practices and competent performance. Mr. Don Bennett, Executive Director of the IPTPC, describes the NEA Code of Ethics used by the IPTPC to set up standards of professional practices as "vague" (4). The areas covered under the IPTPC standards are rather all inclusive and could easily be called to task for explanation. For instance, under commitment to the students, the following rule exists: "Shall not tutor for remuneration students assigned to his classes, unless no other qualified teacher is reasonably available" (36, p. 24). This position calls many questions. They include further definition of "qualified" and "reasonably available." Also, does tutoring include private music lessons for students of music teachers? Another example, "Shall not knowingly distort or misrepresent the facts concerning educational matters in direct or indirect public expressions" (36, p. 25). Again, what does "knowingly" mean? This pattern of action may be

undesirable behavior, but would the IPTPC punish for it? Could the IPTPC distinguish between knowing and unknowing distortions?

Because of state and professional control existing within the IPTPC, problems exist with the criteria of codes of ethics in the area of not assuming agreement on professional policy or purpose where none exists. In the area of contract disputes, the point was made in interviews that the six segments that make up the one professional group -- teachers, superintendents, elementary principals, secondary principals, Department of Public Instruction personnel, and teacher education personnel -- could differ significantly on their interpretation of specific matters of educational ethics. Indeed, though most IPTPC members interviewed made the point that the IPTPC usually was able to come to an agreement on matters of policy, the teachers and administrators were more than once described as at odds with each other (35). In the area of sexual acts with a child, interview respondents supported a position held by educators that any sexual misconduct by an educator was unprofessional, whether it had an effect upon the school environment or not (35). However, this position is at odds with statute. An effect upon the school situation must be shown. At the same time, this position can be argued as one that meets a need of a good code of ethics, "A code should deal only with professional conduct or with nonprofessional conduct that bears a clear and unmistakable relationship to professional conduct" (40, p. 418). Also, "A code must not confuse undesirable patterns of behavior with unethical ones" (40, p. 418).

Two requirements of good codes of ethics help to underline the difficulty of reviewing the published standards of the IPTPC. One is that "A code should protect the competent practitioners by a straightforward recognition of the various situations in which the practitioner may become the object of unjustified lay criticism and abuse ..." (40, p. 418). This position requires a clarity in professional codes that is difficult to find in the published standards of the IPTPC. The standards are rather all inclusive and many can easily be called to task for further explanation. Another is that "A code should be complete in the sense of not neglecting any important ethical problem of the profession" (40, p. 418). This position seems at odds with the former position. There is a need to be as all inclusive as possible without becoming vague.

This difficulty is perhaps best resolved by one observation. It may be inappropriate to apply too critical an eye to the standing rules and practices standards of the IPTPC. These rules and practices standards appear to be the general definitions of potential complaints before the IPTPC, the key to entering a complaint before the IPTPC. From that entry, a new code of ethics is apparent. It is a code of ethics that is defined by case history records of the IPTPC. Just as statute law is subject to interpretation and refinement by the courts, the rules of professional practices are subject to further definition and refinement by the IPTPC. The written standards serve simply as the key to entry to interpretation by the IPTPC. This interpretation in

turn provides an unpublished set of professional standards from which Iowa's educators are judged.

The problem that exists after this observation is that the professional standards to which Iowa's educators are judged by are not available to them in any simple form, a stated objective of this study.

Operational standards

It was mentioned earlier that the IPTPC has apparently felt this problem for themselves. It was apparent in their attempts to write rules to cover contract disputes and student discipline matters. These rules were developed from case rulings and directly reflected the positions taken by the IPTPC on these matters over the years. They constituted "Chapter V" and "Chapter VI" of IPTPC rules. They were vetoed by Governor Robert Ray on 2 December 1980.

Sexual offenses Sexual offenses with students are considered to be a most extreme offense by the IPTPC. Record Case Number 77-5, Ankeny Community Schools, Complainant, versus John Buck, Respondent is a typical example of the case format, decision position, and resolution (16). Criminal indictment records and court judgment records were introduced into the record. The IPTPC ruled that such an act was unprofessional. A unanimous decision resulted recommending that the respondent's teaching certificate be suspended indefinitely. Concluding point of ethical standards is simple and to the point. Criminal sexual acts with a student are unprofessional and warrant removal from the teaching profession.

Contract disputes Contract disputes have received considerable attention from the IPTPC. In their attempts to resolve a lack of clarity in professional standards on this issue, the IPTPC wrote a set of proposed rules based upon previous decision results. These rules are included as written to serve as the working standards of the IPTPC in this area.

CHAPTER 5 - CONTRACT NONPERFORMANCE - RESIGNATIONS - COMPLAINT PROCEEDINGS

640-5.1(272A) General. Section 279.13, The Code, establishes a procedure whereby a teacher or administrator can proffer a request for contractual release to be considered and acted upon by the school board. The conditions and requirements to a release vary from district to district. A few refuse even to consider the merits of a section 279.13 request. In commission proceedings to determine professional responsibility for alleged contract nonperformance equity and fair play require that comparably situated educators and school districts be uniformly treated by an agency of state government regardless of contract situs. A major purpose of the following criteria is to promote such uniformity by imposing conditions precedent to complaint proceedings. These rules are not intended to interfere with local authority as to substantive issues of contractual release. The rules merely define jurisdictional prerequisites and limitations to commission review applicable alike to all educators and school districts.

5.2 Reserved.

640-5.3(272A) Resignation and notice-release denied-mitigating factors. Except where excused or justified by operation of law, equity or public policy, the nonperformance of a teaching or administrative agreement under chapter 279, The Code, is unprofessional and in violation of commission criteria. Such noncompliance is a basis for commission proceedings, possibly resulting in certificate suspension, official reprimand or other agency action. The following criteria impose professional responsibilities and contain elements to be considered in agency complaint proceedings:

5.3(1) Notice: A teacher or administrator desiring a contractual release shall give at least thirty days notice of such desire. The application shall clearly inform the school board that the document is a request to be released in accordance with the

authority of section 279.13. The notice is to be in writing, addressed to the board, with original served on its secretary and a copy furnished to its chief administrator. The educator and the chief administrator shall exercise reasonable efforts to the end that the request receive expeditious board consideration and disposition.

5.3(2) Replacement: The notice shall advise the board that if it and its chief administrator will permit, the teacher or administrator will exercise reasonable efforts to learn of an available and suitable replacement. If permitted, such efforts should be expended. Whether the educator is released or departs in violation of contract, there is a professional obligation to take all steps necessary to provide an unremarkable transition for students and replacement, including, where possible, subsequent consultation with and assistance as needed by the replacement.

5.3(3) Nonperformance-factors in mitigation: In commission complaint proceedings agency disposition as to unprofessional nonperformance will consider, as possibly mitigating the sanction, the following: Physical or psychogenic health factors; marital and family problems related to nonperformance; assistance in securing, training, acclimating and otherwise aiding the replacement in an orderly transition; providing special assistance to the students necessary because of the transition; and, the expenditure of moneys as replacement costs. This list of factors is not exclusive and an item or two under certain circumstances could raise to the level of excused or justified nonperformance.

5.3(4) Nonperformance-certain motives-no excuse or justification: Commission decisions hold that contract nonperformance motivated by profit considerations, desire for new employment or expectations of professional enhancement do not constitute legal or equitable excuse or justification in complaint proceedings.

640-5.4(272A) Release denied-nonperformance-conditions to agency complaint proceedings. This rule is applicable to proceedings commenced after its effective date. Moreover, it is inapplicable where a teacher or administrator has resigned orally or in writing or by actions and has departed the district without efforts to obtain a section 279.13 board release. Complaint proceedings as the result of contract nonperformance may be commenced by the involved district or by its chief administrator. The commission limits the exercise of its jurisdiction to a cause of action the essential elements of which are as follows and which shall be set forth in the complaint:

1. A valid chapter 279 contract (copy attached).
2. A copy of the educator's application requesting board consideration under section 279.13 for mutual termination and release of contract.
3. A copy of board action or action by its chief administrator regarding efforts to procurement of a suitable replacement for the teacher or administrator.
4. A copy of board action reflecting its disposition on the merits of the section 279.13 application.
5. A copy of board policy, written or unwritten, outlining the substance and procedure governing resignations and the issue of release.
6. A statement showing the inception date of and facts as to nonperformance of the contract.
7. A statement, if applicable, showing the amount of money paid by the educator as replacement costs.
8. A statement as to other relevant facts, including those showing exceptional aggravation in the nonperformance situation. If known to the complaining party, the complaint should also contain information as to probable motive causing the educator's default, including matters such as health problems, emotionally charged marital or family problems, need to follow spouse to new employment and the like.

640-5.5(272A) Defective complaint-procedure. Upon receipt of a complaint wherein one or more of the essential elements in rule 5.4(272A) is not shown the same shall be returned for amendment and correction. If the case is not or cannot be corrected to show a cause of action as defined, the proceedings will not be processed but dismissed on jurisdictional grounds.

640-5.5(272A) Nonperformance-excuse or justification.

5.6(1) This rule is intended as guidance in considering whether to commence complaint proceedings for contractual nonperformance. Nonperformance of a Chapter 279 agreement is held free of professional fault if the noncompliance is excused or justified either by operation of law or equity or by reasons of public policy. Under appropriate facts and circumstances the following are possible examples of such cases:

- a. Serious physical or psychogenic health problems of the educator or involving members of the immediate family where medical advice or other compelling reasons necessitate a move from the district or make it impracticable for the educator to perform.
- b. Other serious family and personal problems that produce a level of stress and anxiety whereby the educator is unable to maintain a sufficient motive permitting adequate performance of professional responsibilities.

c. Where an educator, because of marriage contracted after signing the chapter 279 agreement, must follow the other spouse for purposes of marital unity. The same is true where an educator follows his or her spouse as the result of an employment move by the latter.

d. Where an educator reasonably believes it is necessary to flee the district because of actual or threatened physical or psychological abuse perpetuated by spouse or others.

e. Where an educator is frustrated in efforts to perform professional duties as the result of intentional actions by school staff, administrators or board members where such actions are improper, unjustified and unprofessional. The same is true where the educator is assigned professional subject matter for which he or she is not approved or is not competent or qualified in law or in fact. Also, where an educator is required to assume responsibilities which were clearly not contemplated in the contract negotiations or included in the contract at issue.

f. Where an educator has been denied a section 279.13 release and such action appears discriminatory in light of prior district action uniformly granting releases in comparable cases.

g. Where in complaint proceedings it is clearly shown that the complaining district has engaged in a practice of attempting to hire for a current contract year a particular educator obligated to another Iowa school district in accordance with chapter 279, The Code.

5.6(2) Reserved.

640-5.7(272A) Replacement. In agency complaint proceedings where a district contends an available replacement was not suitable, such determination will not be reviewed if made in good faith. Likewise, if the district has in fact hired a replacement, the agency will presume the district acted to retain a competent and suitable person and will not entertain a district contention as to unsuitability (14, pp. 1-2).

Student discipline Student discipline is a professional topic

that has received enough attention from the IPTPC to warrant attempts to resolve the lack of clarity in professional standards that exist on this issue. The IPTPC wrote a set of proposed rules based upon previous decision results. Those rules are included as written to serve as the working standards of the IPTPC in this area.

CHAPTER VI - STUDENT DISCIPLINE-CORPORAL PUNISHMENT AND CONFINEMENT

640-6.1(272A) General. As an exception to the general rule proscribing bodily restraint and the use of force against a non-consenting person, the common law of our nation, the Supreme Court of the United States and the high court of Iowa acknowledge a legal privilege of educators to corporally punish students for a specific purpose and in a limited manner. The privilege is strictly limited to its purposes and grants no license to abuse school children. Where the use of force is nonprivileged or if privileged becomes unreasonable, the educator is subject to both criminal and civil action. The use of nonprivileged physical force by an educator against a student is professionally impermissible and a violation of commission criteria. These rules are in addition to other agency criteria found in chapters 3 and 4 which govern educator-student relationships and which may also have applicability to discipline situations.

640-6.2(272A) Agency intent. The purpose of these rules is to define generally the professional limits as to the use of physical force or confinement by members of the teaching profession. It is not the IPTPC's intent to either condone or encourage corporal discipline or confinement and as to those educators and districts who refrain from its use these rules are not intended as authority for or encouragement to alter such policy.

640-6.3(272A) Legal privilege to defend or protect persons and property. In common with all other persons, educators have a common law privilege to use reasonable and necessary force to restrain or subdue another for the purpose of protecting one's self, others or property. The following criteria concerning professional restrictions as to the use of corporal punishment are inapplicable and not relevant to an issue of force used to protect or defend. In all such cases, however, the use of unnecessary, excessive or other unreasonable force is not privileged, is unlawful and is professionally impermissible.

640-6.4(272A) Persons privileged to punish. The privilege of corporal punishment presupposes that the disciplinarian act in the context of an educator-student relationship, that is, he or she by reasons of employment within the school entity is invested with professional authority, control and trust respecting the student. The privilege to punish further presupposes that the problem provoking corporal discipline has either a direct or substantially indirect nexus to a school function or activity wherein the educator-student tie is present. Where such relationship is lacking, as for example where a student is from an alien district or other jurisdiction, the privilege of corporal punishment is not applicable and if further consideration of discipline

is warranted the child should be referred to the appropriate authorities, parents or police.

640-6.5(272A) Privilege to punish-purpose. Corporal punishment is privilege if, and only if, its purpose and goal is to seek discipline, reformation, training and education of the errant student. Physical force employed for other unrelated reason (e.g., anger, malice, as a spontaneous reaction to physical contact, stress or the like), is not a purpose for which force is privileged.

640-6.6(272A) Corporal punishment-execution and procedure. Conceptually and as contrasted to involuntary, spontaneous or immediate physical response, corporal punishment is an intentional, deliberate and objective process wherein a calm and informed decision is made to inflict pain upon a student for the reasons permitted by the privilege as noted in rule 6.5(272A) supra. The educator actually administering the punishment should abide by the following procedural steps: The student should be given a clear statement as to why he or she is being punished; provided a fair opportunity to state his or her side of the case; and permitted to offer any defense regarding the alleged transgression. Since pain once inflicted is irrevocable, corporal punishment should not be administered if doubts remain as to its justification. In the absence of clear and convincing evidence as to a legitimate goal of education, corporal punishment is not to be administered in the presence of other students.

640-6.7(272A) Nature of force privileged-reasonableness.

6.7(1) Consistent with the purpose of corporal punishment and in conformity with the above criteria, an educator is privileged to use reasonable and moderate physical force in those cases where corporal punishment of a student is indicated and justified by creditable facts of record. The issue as to reasonableness of force depends on the fact and circumstances of each case, some examples of which are:

- a. Age, size, and weight.
- b. Health and physical condition of student, including psychological, emotional or other mental defect or disabilities.
- c. The nature and extent of the student transgression at issue.
- d. Whether the act of discipline is degrading.

6.7(2) Nature has provided posterior portions of the anatomy reasonably suited to corporal chastisement. Physical force and violence applied for reason of discipline to certain portions of the body and in a given manner are highly questionable and probably unreasonable and nonprivileged per se. For example:

- a. Kicking any part of the student.
- b. Striking the student with closed or open fist about the body.
- c. Slapping the student about the face and head with palm, back of hand or other objects.
- d. Pushing or throwing the student against solid objects such as walls, floors or the like.
- e. Seizing and applying painful pressure on bodily parts such as hair, ears, nose and the like.
- f. Forcing the student's head into motion so as to cause contact with some object.
- g. Causing any intentional physical contact with and activity upon the external sexual organs, including the breasts of a female student.

640-6.8(272A) Nonprivileged force-anger and the like. The use of physical force against a student by an educator acting from anger, malice, passion or other such emotional states is nonprivileged, unlawful and unprofessional. This rule applies only to an issue of corporal punishment. Whether the presence of anger or passion affects the privilege to protect or defend under rule 6.3(272A) supra depends on whether the emotional state produced excessive and unreasonable force.

640-6.9(272A) Serious or permanent injury. For the purpose of inflicting corporal punishment, an educator is not privileged to cause serious or permanent bodily or psychogenic injury or to aggravate and complicate any such pre-existing condition. The issue of intent or nonintent to injure is not relevant if the force used to punish is likely to or reasonably capable of causing injury. Corporal punishment privileged at its inception and inflicted in a reasonable and moderate manner does not lose its privileged status by reasons of an injury not reasonably foreseeable or reasonably guarded against. An example might be an injury suffered by a student in efforts to avoid the discipline.

640-6.10(272A) Physical confinement and restraint. If as a matter of discipline an educator intends to physically confine or restrain a student the following conditions must be observed: A room of reasonable dimensions with light and adequate ventilation is to be used. The area must also maintain a comfortable temperature and the student must not be confined there for an unreasonable period. There is no privilege to confine any student in a degrading or humiliating manner, as for example in locked closets, attic areas, crawl spaces and the like (14, pp. 2-3).

Misappropriation of funds The misappropriation of funds is an

obvious criminal act. As such, it is a violation of state law and can

be considered a violation of the provisions of professional practices of the IPTPC. In actual case hearings, the IPTPC has refined the position they take on this issue.

In the previously mentioned Case Number 80-13, Lewis Central Education Association, Complainant, versus Clarence Miles, Respondent, a position is taken that the conversion of school funds to personal use is unprofessional. However, a "... design and action to permanently deprive ..." (26, p. 6) the funds from legal use is stated as a requirement to lead to the most severe professional punishment, indefinite suspension, or certificate revocation recommendation. That was the result in this case. In another previously mentioned case, Case Number 76-3, Shellsburg Education Association versus Chauvin, the act was seen as unprofessional, but the evidence was not compelling that the desire was to forever deprive the school of the use of the funds. In that case, a reprimand was issued. Concluding point of ethical standards is simple and to the point. Conversion of school funds to private use is unprofessional. At least a reprimand is required for such an act. If it can be proven that the use was designed to permanently deprive the school of the use of the funds, certificate revocation action is warranted.

Professional incompetence In Case Number 81-1, Muscatine Community School District, Complainant, versus Fred Blaskovich, Respondent, the IPTPC dealt directly with the standards and requirements of professional competence in the teaching profession. Lengthy court precedence is referenced. Lack of knowledge taught, inability to

impart knowledge, and insubordination are all cited as grounds for professional incompetence. Though no one specific allegation was seen as warranting certificate suspension or revocation, the IPTPC took the position that a preponderance of evidence warranted such action. Enough single items become one big concern. The IPTPC recommended indefinite suspension or revocation of the teaching certificate involved. As previously mentioned, the State Board of Educational Examiners ruled that such action was too severe, as a teacher that is ineffective in one environment may be effective in another. The State Board of Educational Examiners suspended the teaching certificate for a specified period of time. Concluding point of ethical standards is that though it is difficult to prove, professional incompetency will be the IPTPC's ruling if there is a reasonable development of considerable evidence. Such incompetency is viewed by the IPTPC as cause for certificate suspension and/or revocation. The problem of enforcement by the State Board of Educational Examiners remains in doubt.

Administrative malpractice In previously mentioned cases --
Case Number 76-5, Dorothy Beatty et al., Complainants, versus Harvey Chauvin, Superintendent, Shellsburg Community School District, Respondent;
Case Number 78-8, Plainfield Education Association by Kay Shook, Complainant, versus David Lau, Superintendent, Plainfield Community Schools, Respondent; Case Number 80-12, Joyce VanRoekel, Parent, Complainant, versus Delmar Cram, School Administrator; Case Number 80-17, Sue Torres and Juanita Armstrong, Complainants, versus Roger Aceta, Respondent; and Case Number 81-4, Mar-Mac Educational Association,

Complainant, versus Craig McIntosh, School Administrator, Respondent --
the IPTPC set the following standards:

1. An administrator should not use evaluations as a tool to harass or punish educators. Such an action will likely result in a warning or reprimand.

2. An administrator should not display anger in attempting to control the actions of other educators. Such an action will likely result in warning or reprimand.

3. An educator should not assign a noncertified teacher to a classroom. Such action will likely result in a reprimand.

4. An administrator should not attempt to limit due process rights or freedom of speech rights to other educators, students, or patrons. Such action will likely result in a warning or reprimand.

5. An administrator should not attempt to use procedures other than 279.13, Code of Iowa, to cause resignation or termination of an employee. Such an action will likely result in a warning or reprimand.

6. An administrator should not release information about others that is confidential or use derogatory comments about others. Such an action will likely result in a warning.

The concluding point of ethical standards is that school administrators are required to work cooperatively with students, staff, parents, and community for the improvement of education. Attempts to circumvent laws regarding freedom of speech, or the use of administrative powers for a purpose other than which they were designed, are unprofessional.

CHAPTER V. SUMMARY, CONCLUSIONS, LIMITATIONS,
DISCUSSION, RECOMMENDATIONS

Summary

... the precise meaning of profession has yet to be determined. Some definitions limit it to those who are licensed, but that leaves out theologians. Some say a stringent canon of ethics is necessary, but shouldn't persons of every occupation be ethical? Some say the key is a thorough education in the liberal arts and a discipline, but does that mean a Ph.D. in comparative literature is a professional while a nurse with two years training is not?

The perfect definition of professional may never be agreed upon, which probably is for the best. If someone, whether a doctor or a life-insurance salesman, can do better job by opting for more education, a set of ethics and higher standards, then all the better. Who is to say that person is no professional (52)?

An overall objective of the Iowa Professional Teaching Practices Commission (IPTPC) is to provide a forum through which Iowa's educators can move toward attainment of professional status. This is to be accomplished through establishment of self-direction and self-policing for the educational professions of Iowa. After 17 years of existence, the IPTPC's history suggests that:

1. The IPTPC was created out of a national movement to establish professional self-governance over the education professions.
2. The IPTPC has powers and functions consistent with one aspect of the goals of the national movement to establish professional self-governance over the education professions, a professional practices commission.
3. The teacher preparation programs of Iowa have placed very little, if any, emphasis on the functions, purposes, and powers of the IPTPC.

4. The educators of Iowa, to varying degrees by the groups they represent, have overall agreement with the positions taken by the IPTPC.

5. The developmental history of the IPTPC depicts a battle of funding and control problems that directly relate to the difficulty of client knowledge of the IPTPC.

6. The IPTPC case load ranks fourth in the nation. This case load reflects the areas of professional concerns in Iowa. These areas can be cataloged under the headings of sexual offenses, contract disputes, student discipline, misappropriation of school funds, professional incompetence, and administrative malpractice.

7. The written ethical and competent performance standards of the IPTPC have difficulty in meeting the standards for effective codes of ethics. However, the IPTPC case history reflects a refinement of written standards of professional practices.

Conclusions

Assessment of the IPTPC from the data assembled in this history leads to the following conclusions in response to the specific questions set by this study:

1. Does the IPTPC effectively police the ranks of Iowa's educators?

The IPTPC as currently funded and organized cannot effectively fulfill its police function for Iowa's educators.

2. Does the IPTPC enhance the position that Iowa's educators are serving in a professional status?

The attempts of the IPTPC to establish and rule upon ethical and competent performance standards have enhanced the position that Iowa's

educators are serving in a professional status.

3. Does the IPTPC enhance the concept of a service ideal or does it work to establish a control of resources and rewards for Iowa's educators?

The IPTPC does not work to establish a control of resources to increase financial rewards for Iowa's educators. The IPTPC does enhance the acceptance of a service ideal for Iowa's educators.

4. Does the IPTPC play a clarifying role in the development of professional standards and ethics for Iowa's educators?

The IPTPC does play a clarifying role in the development of professional standards and ethics for Iowa's educators.

Limitations

An attempt to write a history, the first history, of the IPTPC faces imposed limitations that must be addressed. They include:

1. A lack of library resources on this topic confines this history to limited sources; to include IPTPC records and minutes, and interview responses from educators party to IPTPC's history. Problems included:

a. Written records were often incomplete. The numbering system of cases before the IPTPC does not log the dismissal or resolution of each case. Potential cases were assigned a number. Many of these cases never came to question. Some of the hearing records have been lost. Earlier records were incomplete and record-keeping procedures of some later cases allowed IPTPC records to be incomplete.

b. Interview responses are subject to concerns about the reliability of responses. Interview subjects became windows through

which to view the past. No matter how pure the glass, some distortion is to be expected.

2. The instruments used to develop perceptions of Iowa's educators toward matters of professional ethics and self-governance had to be developed from the expressed concerns and actions of the IPTPC and from expected concerns about professionalism. Attempting to develop base knowledge for this history led to some difficulties. They included:

a. A lack of definition of terminology when changing the instrument from one professional educational group to another. An example would be the attempt to measure perceptions about "instructional incompetence" in relation to school administrators.

b. A printing error lost information from one survey statement; statement 27, of Department of Public Instruction Personnel and teacher education personnel, was an error reprint of statement 26.

c. Concerns about the effect of collective bargaining laws on Iowa educators' perceptions of professional ethics and standards were not assessed in detail. The general concept of a concern for the establishment and enforcement of professional practices as relating to collective bargaining is addressed.

The design of this history relates to broad brush strokes attempting to develop a first history. These strokes must be an attempt to be as definitive as possible, but there must also be a realization that the design of this study limits access to information that could form the basis of future and additional study.

Discussion

Each of the four conclusions of this study is discussed in detail.

1. The IPTPC, as currently funded and organized, cannot effectively police the ranks of Iowa's educators.

The Iowa Professional Teaching Practices Commission (IPTPC) works under a funding appropriation that provides minimal maintenance needs. The wages of its executive director and part-time office help, office expenses, plus the expenses of commission members while serving on IPTPC business use up the funds that are currently available to the IPTPC. Without some expansion of these funding arrangements, the IPTPC's role is locked in. Maintenance funds provide only maintenance of current role.

This situation is highly inappropriate. Educators endorsed the increase in certification costs and expected that the increase would fund the IPTPC. It does. However, to provide funds that are easily described as maintenance funds when compared with the increased revenues obtained gives the appearance of betrayal. The argument is not for all the funds generated by the increase in certificate costs, just enough to allow the IPTPC to develop its role. And that role cannot be developed without proper funding to provide the staff and education necessary to place the IPTPC's message before its public.

The funding problem is also directly related to what is perceived as an organizational problem. The IPTPC's Executive Director is investigator, legal counsel, and office manager. A part-time IPTPC must have a full-time staff of more than one full-time member. At the very

least, a full-time office staff would be appropriate. Point of fact is that when this investigator asked for copies of IPTPC hearing records, the IPTPC office secretary had to state, "We don't have the staff to do this for many people, so we can't let it be known" (37). A visit to the IPTPC office in Des Moines underlines this situation. The office is isolated and out of the way. It generally gives off the appearance of leftover space. Obviously, appearances are not everything. However, they have to be seen as important when the topic under discussion is the professional appearance and status of Iowa's educators. If educators are to become professionals, the agency responsible for setting professional standards must be allowed the appearance of professional status. That takes more money than is now given the IPTPC. The Iowa budget for professional self-governance for 1981-82 was \$65,000. Hedo M. Zacerle, Administrator of the Committee on Professional Ethics and Conduct for Iowa's legal profession, points out that the legal profession of Iowa had spent approximately \$135,000 for the same time period (54). The number of clients and professionals involved between the educational and legal professions would suggest that the proportional budget amounts should at least be reversed.

2. The attempts of the IPTPC to establish and rule upon ethical and competency performance standards have enhanced the position that Iowa's educators are serving in professional status.

Though knowledge of and press coverage of the Iowa Professional Teaching Practices Commission (IPTPC) is limited, some does exist. The IPTPC does reflect the overall ethical and standards positions of

the portion of the public it represents. It does come to grips with the difficult ethical and standards problems faced by Iowa's educators. It does define the areas of professional concern that affect Iowa's educators. The fact that this knowledge is not widely disseminated or understood by Iowa's educators is a monumental problem to overcome. But the fact does exist that the work required to enhance the position that Iowa's educators are serving in professional status has been and is being done by the IPTPC.

3. The IPTPC does not work to establish a control of resources to increase financial rewards for Iowa's educators. The IPTPC does enhance the acceptance of a service ideal for Iowa's educators.

As currently established, the IPTPC does not have standards boards powers. It does not decide who enters the profession, what accreditation requirements exist for that entry, or directly say who may stay in the profession. The IPTPC role is not one of reward or punishment. The IPTPC has been very conservative in recommending certificate suspensions or revocations. While teacher organizations may have some interest in a control of resources, that position is not reflected by the IPTPC. The IPTPC and its public view educators as providing a service function for society. The role is one of working to have the best enter the education professions and help them to become effective and competent professionals.

Nothing in the history of the role played by the IPTPC suggests anything but a self-sacrificing position on the part of competent educators to improve instructional status and competence in Iowa.

The best example of this fact is the IPTPC position that professional advancement is not justifiable grounds for breaking a service contract. This position is so strong that it is against the overall desires of the educators surveyed for this history. The IPTPC has shaped a role for itself that represents an attempt to portray the best of the educational professionals it represents.

4. The IPTPC does play a clarifying role in the development of professional standards and ethics for Iowa's educators.

The case histories of the IPTPC have defined and refined the expected standards of Iowa's educators. The concept of a review by one's peers is a long established concept in this country. The written standards of the IPTPC have a developmental history of being produced by educators for educators. The operational standards were developed out of case history decisions of professionals sitting in judgment of the other professionals' actions. The goal has always been improvement of the educational professions of Iowa. If the standards, written and operational, are viewed and understood by Iowa's educators, they cannot help but clarify the requirements for attainment of improved professional status for Iowa's educators.

Recommendations

A final question for assessment of the IPTPC is how the IPTPC can better meet the needs of Iowa's educators in the areas of professional standards and self-governance. This assessment is approached through two types of recommendations. The first is a set of specific recommendations for Iowa and the IPTPC. The second is a set of recommendations for

future study of the IPTPC to further define the needs of Iowa's educators in the areas of professional standards and self-governance.

For Iowa and the IPTPC

Any recommendations for Iowa and the Iowa Professional Teaching Practices Commission (IPTPC) must deal with the major problems faced by the IPTPC. They include:

1. The IPTPC must be funded and staffed at a level commensurate with the state status it has by statute. Funds would be used to:
 - a. Provide adequate compensation for a position of Executive Director of the IPTPC, a full-time position to be filled by an Iowa educator, and provide that person with a defined job description. This director would be responsible for the formation of instructional formats to educate Iowa's public about the IPTPC. This educator would oversee and direct the investigation procedures for potential cases before the IPTPC.
 - b. Provide adequate compensation for a position of Legal Counsel to the IPTPC, a full-time position to be manned by an exceptional legal counsel, and provide that person with a defined job description. This counsel would provide initial legal advice for investigations conducted by the Executive Director of the IPTPC, and direct the hearing once a case is accepted for hearing by the IPTPC.
 - c. Provide adequate compensation for a position of Office Manager for the IPTPC, a full-time position to be manned by an exceptional Iowa educator, and provide that person with a defined job description. This office manager would conduct the office functions

of the IPTPC and assist the Executive Director in investigation of potential cases for the IPTPC.

d. Provide adequate funding for a full-time clerical position for the IPTPC.

e. Provide adequate funding to cover expenses of production and distribution of materials and educational forums to be presented to Iowa's educators.

2. Provisions must be made to give the IPTPC the procedural support required to make it the most important step in a line of professional review available to Iowa's educators.

a. To keep the IPTPC from being the first authority in matters dealing with professional conduct relegates it to an advisory role. Such provides form without function. Current practice of allowing surrendering of teaching certificates to circumvent IPTPC action must be eliminated, unless incorporated into IPTPC action. Positions as well supported as the Blaskovitch case -- in which the IPTPC took the most drastic step possible, recommendation of indefinite certificate suspension or revocation -- must be given as much procedural support and consideration for endorsement as possible.

b. Positions as well-supported as the standards for professional practice in contract disputes and student discipline deserve the endorsement and support of the state level, to include the Governor of Iowa and state professional organizations representing educators. These standards positions do nothing more than reflect the stated ruling positions of the IPTPC. If objections exist, they are subject to

compromise and modification. To stand in their way of acceptance only serves one purpose, to isolate Iowa's educators from the standards by which they will be judged.

3. The state of Iowa requires the existence of the IPTPC and defines its role. It should not allow the topic of professional ethics and the IPTPC to be overlooked by the teacher preparation institutions of Iowa. The subject should be required in programs either as a structured segment of regular courses, or preferably, as an element of a professional ethics course or an interwoven concept of ethics in professional programs. The subject matter exists in ample portions; the importance of the issues involved is more than enough justification.

4. The IPTPC must -- with the assistance of adequate funding, adequate staffing, and adequate supporting actions from the state level -- make its case known to Iowa's educators. Its education of Iowa's educational professions must be a systematic and well-planned effort. It cannot be left to a haphazard effort of hit and miss. It will require the efforts and services of full-time educators on the IPTPC staff.

5. The IPTPC must sell itself and its role to the educators of Iowa that can best present that role, the teacher preparation personnel of Iowa. The fact that the IPTPC is not taught at this level should be of concern to these institutions. This fact is deplorable for Iowa and the IPTPC to accept.

6. The IPTPC, while staking out its own ground and defining its own role, must have better communications with the organizations that

represent Iowa's educators: The Iowa State Education Association (ISEA), The Iowa Association of School Administrators (IASA), The Iowa Association of Secondary School Principals (IASSP), The Iowa Association of Elementary School Principals (IAESP), and The Iowa Association of School Boards (IASB). The current feeling that the IPTPC Executive Director takes professional differences personally must be overcome.

For future study

This history assembles information that previously was not available to the educators of Iowa. Such a study generated many possibilities for future study. Some of these ideas include:

1. Survey responses indicate a sharp division among professional groups. Teachers and elementary principals agreed overall on matters of perceptions of educational standards and ethics. Superintendents and secondary principals did the same. Department of Public Instruction Personnel and teacher preparation personnel did the same. At the same time, these three groups often disagreed with each other. It is possible that educators are displaying three different professions within a career area. Investigation into this possibility could be beneficial in further understanding Iowa's educators, what they believe and why.

2. Perhaps the notion that teachers wish to relegate matters of professional standards to administrators because of professional negotiations status should be explored in detail. This study found that educators believe that professional negotiations increase the need to be concerned about the establishment and enforcement of

professional standards and practices. Perhaps the reasons and basis for that belief should be explored further.

3. The term professional is often associated with lawyers, the clergy, and medical doctors. Perhaps some comparison of belief structures on matters of professionalism and professional ethics should be made with those of Iowa's educators.

4. Replication of aspects of this study, with greater emphasis on historical aspects not stressed in this study, could prove useful. For instance, the legislative history of the IPTPC would perhaps prove to be of benefit for future study. Interview respondents depicted political and legislative power struggles over attempts to obtain approval of the original standards of professional competency. The same was true for the vetoed standards of contract compliance and student discipline. These struggles and an in-depth view of the factors behind the original legislation to form the IPTPC could prove useful for Iowa's educators' understanding of their professional status as viewed by Iowa's legislative branch of government.

5. An in-depth biographical study of the people who have made up the IPTPC would help to define the educational professions of Iowa. This researcher has felt that the process of reviewing tapes of interviews conducted for this study would, for other educators, be worthy of education credit. These educators, interviewed for this study, are overall superior examples of the educational programs and educators in Iowa. There is much to be learned from them.

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APPENDIX A. INTERVIEW DOCUMENTS

SIGNED INFORMED CONSENT FOR HUMAN SUBJECTS

The information obtained from this interview will become a part of a dissertation project at Iowa State University. The purpose of this study is to provide a history of the Iowa Professional Teaching Practices Commission. The information resulting from this study will be available to serve the needs of Iowa's educators that will have professional contact with the Iowa Professional Teaching Practices Commission and those educators that become future members of the IPTPC. It is also expected that this study will help to define the current professional and ethical standards of Iowa's educators.

You have been chosen as an interview subject because of your professional association and contact with the IPTPC. Your information is vital to the completion of this study. Furthermore, you have the ability, through your responses, to help this study further educate Iowa's educators about the IPTPC, its rulings, its standards, and its efforts to improve the quality of education provided in Iowa. The IPTPC endorses a free and open exchange of ideas as a professional standard. It is through this process that this study hopes to use your information to help others understand the IPTPC.

A series of questions will be presented to you for answers. The questions relate to your association with the Iowa Professional Teaching Practices Commission, your knowledge of its rulings, and your perceptions about professional standards, practices, and ethics as they exist for Iowa's educators. Some questions may prove difficult to answer because of the amount of contact you have had with the subject matter of the question. Some questions may prove to be too specific, relating to specific case histories, and could possibly lead to some difficulty in answering.

You may refuse to participate in this study or withdraw your consent to participate at any time without prejudice to yourself. You may refuse to answer any question at any time. Every effort will be made to keep your information confidential. If any information attributed directly to you is to be used from this interview your specific permission will be requested and obtained prior to that use. If at any time during this interview or after it you would wish to provide a written response to a question or provide additional documents for this study you may defer a question for that purpose or approach.

I remain willing to answer any inquiries you may have as to the procedures of this interview, study, or the purpose of any questions. This interview will be taped and recordings erased at the conclusion of this study.

Your signed consent to participate in this study will be requested at the end of this interview. It will state:

I, -----, consent to act as a subject for this study based upon the guidelines provided above. These guidelines have been read to me by the interviewer and read by me.

Signed: -----

Date: -----

INTERVIEW QUESTIONS

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1. Through what procedure, format, or forum did you first become acquainted with the IPTPC?
2. How do you define professionalism?
3. Do you feel that educators fit your definition of a professional? Why or why not?
4. Do you know or can you explain what influence the New Horizons in Teacher Education and Professional Standards movement of the 1960's had on the development of the IPTPC?
5. Do you know or can you explain what influence the ISEA Commission on Teacher Education and Professional Standards (TEPS) had on the development of the IPTPC?
6. With your experience with the IPTPC rulings; what would you see as the most significant cases dealing with the following topics and why?
 - a. Contract Disputes
 - b. Student Discipline
 - c. Misappropriation of School Funds
 - d. Professional Incompetence
 - e. Administrative Malpractice
7. Can you explain why the Nebraska, Georgia, and Florida Commissions were selected to become models for the IPTPC?
8. Do you think that Iowa's educators have sufficient knowledge of the IPTPC?
9. If you feel that there is a lack of knowledge about the IPTPC why do you think that lack of knowledge exists and how can it be corrected?
10. How would you assess the appointment of Don Bennett and its effects on the direction and the functioning of the IPTPC?
11. It has been suggested that educators desire to limit access to their ranks in order to gain social and economic rewards. Do you feel that this position plays any role in educator's desires to police their own ranks? Why or why not?
12. The IPTPC wrote standards to deal with contract release and student discipline upon criteria of decisions in cases before the IPTPC. Governor Ray specifically rescinded those standards in Governor's Administrative Rules Executive Order No. 7 on 12/2/80. Briefly explain that action and does this action bring into question any of the decisions and criteria for decisions in these areas by the IPTPC?

13. The concept of no harm being done to students is often listed in argument in decisions involving contract disputes. How did this concept develop, and in your opinion, when does harm begin to students when a contract dispute takes place?
150
14. Are there times that you would advise a respondent to not appear at his or her hearing? Are there times that it would be beneficial not to appear?
15. In a hearing in which a respondent has a specific allegation made against him, and the testimony of the respondent indicates that other charges could be made, does the IPTPC have the right and/or responsibility to address the unspecified charges? Should the IPTPC merely address the record allegations listed in original charges?
16. How did the concept of minority decisions come about for the IPTPC? When is it appropriate to issue such a decision when it is realized that such a decision often obtains a disproportionate amount of press coverage and could adversely affect the career of a person exonerated of the charge in question?
17. If a sex offense takes place outside of a school situation and no attributable affect is proven to the school situation, does an unprofessional act exist?
18. In case 77-12, 77-16, and 77-19, and minutes of the IPTPC the charge of Executive Director Don Bennett being partial in hearings is addressed. What is the role of the IPTPC Executive Director? Is there a job description? Why or why not?
19. From your point of view, has the IPTPC Executive Director ever displayed partiality in a case?
20. Is there a point or position that you would like to make about the IPTPC to be included in this study or some direction for the IPTPC's future that you would like to address?

APPENDIX B. SURVEY DOCUMENTS

College of Education
 Educational Administration
 N229 Quadrangle
 Ames, Iowa 50011
 Telephone 515-294-5450

IOWA STATE
 UNIVERSITY

24 May 1983

Fellow Educator:

Please respond to this second request for survey information. Your response is of vital importance to the completion of this study.

Joseph S. Drips

The enclosed survey instrument is a part of a dissertation project that I am conducting at Iowa State University. The instrument asks questions concerned with Iowa educator's perceptions, and understanding, of educational professional standards, practices, and ethics. In particular, this study will attempt to assess Iowa educator's knowledge of state educational professional standards and practices, and their positions on recurring questions of professional standards and ethical practices.

This study will result in a written history of Iowa's commission on professional standards and ethical practices. Such a history does not currently exist. Without such a history Iowa's educators find it difficult to understand Iowa's current system of defining and handling questions of professional standards and ethics. When completed, this history will provide a readily available reference text to serve the needs of Iowa's educators as they deal with the terribly complex ethical questions that they face each working day.

I am particularly desirous of obtaining your responses because, as a representative of a professional group, your perceptions and experiences are important in understanding how Iowa's educators view difficult problems of professional standards and ethical practices.

The enclosed instrument has been tested and it has been revised to obtain all necessary data while requiring a minimum of your time. If you do not choose to participate do not return the survey instrument. If you return the survey instrument this will be interpreted as implied informed consent. No individual or school district will be identified in the reporting of these data. All tables will show only summative data across all respondents. However, it will be greatly appreciated if you complete the enclosed survey instrument and return it in the enclosed stamped envelope prior to 30 May. Other phases of this research cannot be carried out until I complete analysis of survey instrument data. Your survey responses will be tabulated and compiled with others and every effort will be made to keep confidential the specific responses that you provide. Upon completion of this study I would be pleased to send you a summary of the survey results if you so desire.

Thank you for your cooperation.

Respectfully yours,

Joseph S. Drips
 Joseph S. Drips, Researcher

Richard P. Manatt

Richard P. Manatt, Major Professor

SURVEY INSTRUMENT [TEACHERS]

Please respond to the following statement by indicating your agreement or disagreement and the level of that agreement or disagreement.

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For Example:

Strong agreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

Strong disagreement with a statement would be recorded as follows:

A 1 2 3 4 5
 D

Moderate agreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

A slight disagreement with a statement would be recorded as follows:

A 1 2 3 4 5
 D

And if you are indifferent to a statement, neither agree or disagree, record your response by circling both A and D as follows:

A 1 2 3 4 5
 D

1. The Iowa commission that rules on matters of educational professional ethics is The Iowa Commission of Educational Professional Standards and Practices.

A 1 2 3 4 5
D

2. Iowa's teachers have knowledge of the commission designed to rule on educational professional standards and practices.

A 1 2 3 4 5
D

3. Iowa's teachers have read the established criteria of professional standards and practices that they are required to conform to.

A 1 2 3 4 5
D

4. Iowa's teachers understand the established criteria of professional standards and practices that they are required to conform to.

A 1 2 3 4 5
D

5. Teachers are members of a profession.

A 1 2 3 4 5
D

6. Teachers place an emphasis on service rendered to others rather than upon economic gain.

A 1 2 3 4 5
D

7. Teachers believe in a code of ethics designed to stimulate exemplary performance.

A 1 2 3 4 5
D

- | | |
|---|---------------------|
| 8. Teachers desire to police their own ranks. | A
1 2 3 4 5
D |
| 9. Teachers believe that those that commit unethical and/or unprofessional acts should face suspension or revocation of their teaching certificates. | A
1 2 3 4 5
D |
| 10. Teachers desire to limit access to their ranks in order to gain social and economic rewards. | A
1 2 3 4 5
D |
| 11. A teacher that commits a felony that affects his or her ability to perform in the school environment commits an unprofessional act. | A
1 2 3 4 5
D |
| 12. A teacher that commits a felony that does not affect his or her ability to perform in the school environment commits an unprofessional act. | A
1 2 3 4 5
D |
| 13. The conviction of a teacher for a felony should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 14. Instructional incompetence by a teacher is an unprofessional act. | A
1 2 3 4 5
D |
| 15. Instructional incompetence by a teacher should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 16. Assignment of a noncertified teacher to a classroom by a school administrator is an unprofessional act. | A
1 2 3 4 5
D |
| 17. Assignment of a noncertified teacher to a classroom by a school administrator should be considered as grounds for suspension or revocation of the administrator's teaching certificate. | A
1 2 3 4 5
D |
| 18. A teacher's misappropriation of school funds is an unprofessional act. | A
1 2 3 4 5
D |
| 19. A teacher's misappropriation of school funds should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 20. A teacher's actions that arise out of anger constitute an unprofessional act. | A
1 2 3 4 5
D |
| 21. A teacher's actions that arise out of anger should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |

A

22. Teachers that use others for personal gain commit an unprofessional act.

1 2 3 4 5

D

A

23. A teacher's use of others for personal gain should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

24. A teacher found guilty of sexual acts with a child is guilty of an unprofessional act.

1 2 3 4 5

D

A

25. A teacher's sexual acts with a child should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

26. A teacher's derogatory comments about students, parents, or other educators are unprofessional.

1 2 3 4 5

D

A

27. A teacher's derogatory comments about students, parents, or other educators should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

28. A teacher's manipulation of the academic process; such as teaching procedures or grading procedures; to deal with student discipline matters is unprofessional.

1 2 3 4 5

D

A

29. A teacher's manipulation of the academic process; such as testing procedures or grading procedures; to deal with student discipline matters should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

30. A teacher's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, is unprofessional.

1 2 3 4 5

D

A

31. A teacher's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

32. Educational ethics require that a contract be honored, when required by either the educator or the school system, without regard to the grounds for request for release from the contract.

1 2 3 4 5

D

A

33. Personal problems; such as marital difficulties or emotional stress; can serve as justifiable grounds for an educator's unilateral decision not to fulfill a contract.

1 2 3 4 5

D

A

34. Professional advancement or enhancement of position are justifiable grounds for an educator's unilateral decision not to fulfill a contract.

1 2 3 4 5

D

35. Personal acts; such as contracting marriage and a need to move for marital unity; are justifiable grounds for an educator's unilateral decision not to fulfill a contract. A
1 2 3 4 5
D
36. Mitigating factors; such as an educator's payment of replacement costs, past experience, or training and/or locating replacements; should reduce the severity of any punishment given for a unilateral decision not to fulfill a contract. A
1 2 3 4 5
D
37. Certificate suspension or revocation is too harsh a punishment for nonperformance of a contract, a unilateral decision to leave a contract position without school board release, if no proven harm is done to students. A
1 2 3 4 5
D
38. A guilty state of mind must exist for a teacher's act to be judged unprofessional. A
1 2 3 4 5
D
39. Most teachers have viewed an act by another educator that they would classify as unprofessional. A
1 2 3 4 5
D
40. Most teachers have viewed an act by another educator that they would deem worthy of consideration of suspension or revocation of a teaching certificate. A
1 2 3 4 5
D
41. If a student's regular classroom teacher is unexpectedly replaced by a substitute that student's educational program will be unfavorably disrupted. A
1 2 3 4 5
D
42. Collective bargaining laws have increased the need for Iowa's teachers to be concerned about the establishment and enforcement of professional standards and practices. A
1 2 3 4 5
D

SURVEY INSTRUMENT [SUPERINTENDENTS]

Please respond to the following statement by indicating your agreement or disagreement and the level of that agreement or disagreement.
157

For Example:

Strong agreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

Strong disagreement with a statement would be recorded as follows:

A
 D 1 2 3 4 5

Moderate agreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

A slight disagreement with a statement would be recorded as follows:

A
 D 1 2 3 4 5

And if you are indifferent to a statement, neither agree or disagree, record your response by circling both A and D as follows:

A
 D 1 2 3 4 5

-
- | | | |
|---|--------|-----------|
| 1. The Iowa commission that rules on matters of educational professional ethics is The Iowa Commission of Educational Professional Standards and Practices. | A
D | 1 2 3 4 5 |
| 2. Iowa's superintendents have knowledge of the commission designed to rule on educational professional standards and practices. | A
D | 1 2 3 4 5 |
| 3. Iowa's superintendents have read the established criteria of professional standards and practices that they are required to conform to. | A
D | 1 2 3 4 5 |
| 4. Iowa's superintendents understand the established criteria of professional standards and practices that they are required to conform to. | A
D | 1 2 3 4 5 |
| 5. Superintendents are members of a profession. | A
D | 1 2 3 4 5 |
| 6. Superintendents place an emphasis on service rendered to others rather than upon economic gain. | A
D | 1 2 3 4 5 |
| 7. Superintendents believe in a code of ethics designed to stimulate exemplary performance. | A
D | 1 2 3 4 5 |

8. Superintendents desire to police their own ranks.

158

A
1 2 3 4 5

D

9. Superintendents believe that those that commit unethical and/or unprofessional acts should face suspension or revocation of their teaching certificates.

A
1 2 3 4 5

D

10. Superintendents desire to limit access to their ranks in order to gain social and economic rewards.

A
1 2 3 4 5

D

11. A superintendent that commits a felony that affects his or her ability to perform in the school environment commits an unprofessional act.

A
1 2 3 4 5

D

12. A superintendent that commits a felony that does not affect his or her ability to perform in the school environment commits an unprofessional act.

A
1 2 3 4 5

D

13. The conviction of a superintendent for a felony should be considered as grounds for suspension or revocation of their teaching certificate.

A
1 2 3 4 5

D

14. Instructional incompetence by a superintendent is an unprofessional act.

A
1 2 3 4 5

D

15. Instructional incompetence by a superintendent should be considered as grounds for suspension or revocation of their teaching certificate.

A
1 2 3 4 5

D

16. Assignment of a noncertified teacher to a classroom by a school administrator is an unprofessional act.

A
1 2 3 4 5

D

17. Assignment of a noncertified teacher to a classroom by a school administrator should be considered as grounds for suspension or revocation of the administrator's teaching certificate.

A
1 2 3 4 5

D

18. A superintendent's misappropriation of school funds is an unprofessional act.

A
1 2 3 4 5

D

19. A superintendent's misappropriation of school funds should be considered as grounds for suspension or revocation of their teaching certificate.

A
1 2 3 4 5

D

20. A superintendent's actions that arise out of anger constitute an unprofessional act.

A
1 2 3 4 5

D

21. A superintendent's actions that arise out of anger should be considered as grounds for suspension or revocation of their teaching certificate.

A
1 2 3 4 5

D

- | | | |
|--|--------|-----------|
| 22. Superintendents that use others for personal gain commit an unprofessional act. | A
D | 1 2 3 4 5 |
| 23. A superintendent's use of others for personal gain should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 24. A superintendent found guilty of sexual acts with a child is guilty of an unprofessional act. | A
D | 1 2 3 4 5 |
| 25. A superintendent's sexual acts with a child should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 26. A superintendent's derogatory comments about students, parents, or other educators are unprofessional. | A
D | 1 2 3 4 5 |
| 27. A superintendent's derogatory comments about students, parents, or other educators should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 28. A superintendent's manipulation of the academic process; such as teaching procedures or grading procedures; to deal with student discipline matters is unprofessional. | A
D | 1 2 3 4 5 |
| 29. A superintendent's manipulation of the academic process; such as testing procedures or grading procedures; to deal with student discipline matters should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 30. A superintendent's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, is unprofessional. | A
D | 1 2 3 4 5 |
| 31. A superintendent's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 32. Educational ethics require that a contract be honored, when required by either the educator or the school system, without regard to the grounds for request for release from the contract. | A
D | 1 2 3 4 5 |
| 33. Personal problems; such as marital difficulties or emotional stress; can serve as justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
D | 1 2 3 4 5 |
| 34. Professional advancement or enhancement of position are justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
D | 1 2 3 4 5 |

- 160
- | | | |
|--|--------|-----------|
| 35. Personal acts; such as contracting marriage and a need to move for marital unity; are justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
D | 1 2 3 4 5 |
| 36. Mitigating factors; such as an educator's payment of replacement costs, past experience, or training and/or locating replacements; should reduce the severity of any punishment given for a unilateral decision not to fulfill a contract. | A
D | 1 2 3 4 5 |
| 37. Certificate suspension or revocation is too harsh a punishment for nonperformance of a contract, a unilateral decision to leave a contract position without school board release, if no proven harm is done to students. | A
D | 1 2 3 4 5 |
| 38. A guilty state of mind must exist for a superintendent's act to be judged unprofessional. | A
D | 1 2 3 4 5 |
| 39. Most superintendents have viewed an act by another educator that they would classify as unprofessional. | A
D | 1 2 3 4 5 |
| 40. Most superintendents have viewed an act by another educator that they would deem worthy of consideration of suspension or revocation of a teaching certificate. | A
D | 1 2 3 4 5 |
| 41. If a student's regular classroom teacher is unexpectedly replaced by a substitute that student's educational program will be unfavorably disrupted. | A
D | 1 2 3 4 5 |
| 42. Collective bargaining laws have increased the need for Iowa's superintendents to be concerned about the establishment and enforcement of professional standards and practices. | A
D | 1 2 3 4 5 |

Please respond to the following statement by indicating your agreement or disagreement and the level of that agreement or disagreement. 161

For Example:

Strong agreement with a statement would be recorded as follows:

(A) 1 2 3 4 (5)
D

Strong disagreement with a statement would be recorded as follows:

A 1 2 3 4 (5)
(D)

Moderate agreement with a statement would be recorded as follows:

(A) 1 2 (3) 4 5
D

A slight disagreement with a statement would be recorded as follows:

A (1) 2 3 4 5
(D)

And if you are indifferent to a statement, neither agree or disagree, record your response by circling both A and D as follows:

(A) 1 2 3 4 5
(D)

1. The Iowa commission that rules on matters of educational professional ethics is The Iowa Commission of Educational Professional Standards and Practices.

A 1 2 3 4 5
D

2. Iowa's elementary principals have knowledge of the commission designed to rule on educational professional standards and practices.

A 1 2 3 4 5
D

3. Iowa's elementary principals have read the established criteria of professional standards and practices that they are required to conform to.

A 1 2 3 4 5
D

4. Iowa's elementary principals understand the established criteria of professional standards and practices that they are required to conform to.

A 1 2 3 4 5
D

5. Elementary principals are members of a profession.

A 1 2 3 4 5
D

6. Elementary principals place an emphasis on service rendered to others rather than upon economic gain.

A 1 2 3 4 5
D

7. Elementary principals believe in a code of ethics designed to stimulate exemplary performance.

A 1 2 3 4 5
D

8. Elementary principals desire to police their own ranks.

162

3
1 2 3 4 5

D

A

9. Elementary principals believe that those that commit unethical and/or unprofessional acts should face suspension or revocation of their teaching certificates.

1 2 3 4 5

D

A

10. Elementary principals desire to limit access to their ranks in order to gain social and economic rewards.

1 2 3 4 5

D

A

11. An elementary principal that commits a felony that affects his or her ability to perform in the school environment commits an unprofessional act.

1 2 3 4 5

D

A

12. An elementary principal that commits a felony that does not affect his or her ability to perform in the school environment commits an unprofessional act.

1 2 3 4 5

D

A

13. The conviction of an elementary principal for a felony should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

14. Instructional incompetence by an elementary principal is an unprofessional act.

1 2 3 4 5

D

A

15. Instructional incompetence by an elementary principal should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

16. Assignment of a noncertified teacher to a classroom by a school administrator is an unprofessional act.

1 2 3 4 5

D

A

17. Assignment of a noncertified teacher to a classroom by a school administrator should be considered as grounds for suspension or revocation of the administrator's teaching certificate.

1 2 3 4 5

D

A

18. An elementary principal's misappropriation of school funds is an unprofessional act.

1 2 3 4 5

D

A

19. An elementary principal's misappropriation of school funds should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

A

20. An elementary principal's actions that arise out of anger constitute an unprofessional act.

1 2 3 4 5

D

A

21. An elementary principal's actions that arise out of anger should be considered as grounds for suspension or revocation of their teaching certificate.

1 2 3 4 5

D

- 163
- | | |
|---|---------------------|
| 22. Elementary principals that use others for personal gain commit an unprofessional act. | A
1 2 3 4 5
D |
| 23. An elementary principal's use of others for personal gain should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 24. An elementary principal found guilty of sexual acts with a child is guilty of an unprofessional act. | A
1 2 3 4 5
D |
| 25. An elementary principal's sexual acts with a child should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 26. An elementary principal's derogatory comments about students, parents, or other educators are unprofessional. | A
1 2 3 4 5
D |
| 27. An elementary principal's derogatory comments about students, parents, or other educators should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 28. An elementary principal's manipulation of the academic process; such as teaching procedures or grading procedures; to deal with student discipline matters is unprofessional. | A
1 2 3 4 5
D |
| 29. An elementary principal's manipulation of the academic process; such as testing procedures or grading procedures; to deal with student discipline matters should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 30. An elementary principal's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, is unprofessional. | A
1 2 3 4 5
D |
| 31. An elementary principal's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 32. Educational ethics require that a contract be honored, when required by either the educator or the school system, without regard to the grounds for request for release from the contract. | A
1 2 3 4 5
D |
| 33. Personal problems; such as marital difficulties or emotional stress; can serve as justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
1 2 3 4 5
D |
| 34. Professional advancement or enhancement of position are justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
1 2 3 4 5
D |

35. Personal acts; such as contracting marriage and a need to move for marital unity; are justifiable grounds for an educator's unilateral decision not to fulfill a contract. A 1 2 3 4 5
D
- 164
36. Mitigating factors; such as an educator's payment of replacement costs, past experience, or training and/or locating replacements; should reduce the severity of any punishment given for a unilateral decision not to fulfill a contract. A 1 2 3 4 5
D
37. Certificate suspension or revocation is too harsh a punishment for nonperformance of a contract, a unilateral decision to leave a contract position without school board release, if no proven harm is done to students. A 1 2 3 4 5
D
38. A guilty state of mind must exist for an elementary principal's act to be judged unprofessional. A 1 2 3 4 5
D
39. Most elementary principals have viewed an act by another educator that they would classify as unprofessional. A 1 2 3 4 5
D
40. Most elementary principals have viewed an act by another educator that they would deem worthy of consideration of suspension or revocation of a teaching certificate. A 1 2 3 4 5
D
41. If a student's regular classroom teacher is unexpectedly replaced by a substitute that student's educational program will be unfavorably disrupted. A 1 2 3 4 5
D
42. Collective bargaining laws have increased the need for Iowa's teachers to be concerned about the establishment and enforcement of professional standards and practices. A 1 2 3 4 5
D

Please respond to the following statements by indicating your agreement or disagreement and the level of that agreement or disagreement. 165

For Example:

Strong agreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

Strong disagreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

Moderate agreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

A slight disagreement with a statement would be recorded as follows:

A 1 2 3 4 5
D

And if you are indifferent to a statement, neither agree or disagree, record your response by circling both A and D as follows:

A 1 2 3 4 5
D

1. The Iowa commission that rules on matters of educational professional ethics is The Iowa Commission of Educational Professional Standards and Practices.

A 1 2 3 4 5
D

2. Iowa's secondary principals have knowledge of the commission designed to rule on educational professional standards and practices.

A 1 2 3 4 5
D

3. Iowa's secondary principals have read the established criteria of professional standards and practices that they are required to conform to.

A 1 2 3 4 5
D

4. Iowa's secondary principals understand the established criteria of professional standards and practices that they are required to conform to.

A 1 2 3 4 5
D

5. Secondary principals are members of a profession.

A 1 2 3 4 5
D

6. Secondary principals place an emphasis on service rendered to others rather than upon economic gain.

A 1 2 3 4 5
D

7. Secondary principals believe in a code of ethics designed to stimulate exemplary performance.

A 1 2 3 4 5
D

- | | | | |
|-----|---|---|-----------|
| 8. | Secondary principals desire to police their own ranks. | A | 1 2 3 4 5 |
| | | D | |
| 9. | Secondary principals believe that those that commit unethical and/or unprofessional acts should face suspension or revocation of their teaching certificates. | A | 1 2 3 4 5 |
| | | D | |
| 10. | Secondary principals desire to limit access to their ranks in order to gain social and economic rewards. | A | 1 2 3 4 5 |
| | | D | |
| 11. | A secondary principal that commits a felony that affects his or her ability to perform in the school environment commits an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 12. | A secondary principal that commits a felony that does not affect his or her ability to perform in the school environment commits an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 13. | The conviction of a secondary principal for a felony should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 14. | Instructional incompetence by a secondary principal is an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 15. | Instructional incompetence by a secondary principal should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 16. | Assignment of a noncertified teacher to a classroom by a school administrator is an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 17. | Assignment of a noncertified teacher to a classroom by a school administrator should be considered as grounds for suspension or revocation of the administrator's teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 18. | A secondary principal's misappropriation of school funds is an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 19. | A secondary principal's misappropriation of school funds should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 20. | A secondary principal's actions that arise out of anger constitute an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 21. | A secondary principal's actions that arise out of anger should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |

- | | | |
|---|--------|-----------|
| 22. Secondary principals that use others for personal gain commit an unprofessional act. | A
D | 1 2 3 4 5 |
| 23. A secondary principal's use of others for personal gain should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 24. A secondary principal found guilty of sexual acts with a child is guilty of an unprofessional act. | A
D | 1 2 3 4 5 |
| 25. A secondary principal's sexual acts with a child should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 26. A secondary principal's derogatory comments about students, parents, or other educators are unprofessional. | A
D | 1 2 3 4 5 |
| 27. A secondary principal's derogatory comments about students, parents, or other educators should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 28. A secondary principal's manipulation of the academic process; such as teaching procedures or grading procedures; to deal with student discipline matters is unprofessional. | A
D | 1 2 3 4 5 |
| 29. A secondary principal's manipulation of the academic process; such as testing procedures or grading procedures; to deal with student discipline matters should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 30. A secondary principal's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, is unprofessional. | A
D | 1 2 3 4 5 |
| 31. A secondary principal's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, should be considered as grounds for suspension or revocation of their teaching certificate. | A
D | 1 2 3 4 5 |
| 32. Educational ethics require that a contract be honored, when required by either the educator or the school system, without regard to the grounds for request for release from the contract. | A
D | 1 2 3 4 5 |
| 33. Personal problems; such as marital difficulties or emotional stress; can serve as justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
D | 1 2 3 4 5 |
| 34. Professional advancement or enhancement of position are justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
D | 1 2 3 4 5 |

A

35. Personal acts; such as contracting marriage and a need to move for marital unity; are justifiable grounds for an educator's unilateral decision not to fulfill a contract.

1 2 3 4 5

D

168

A

36. Mitigating factors; such as an educator's payment of replacement costs, past experience, or training and/or locating replacements; should reduce the severity of any punishment given for a unilateral decision not to fulfill a contract.

1 2 3 4 5

D

A

37. Certificate suspension or revocation is too harsh a punishment for nonperformance of a contract, a unilateral decision to leave a contract position without school board release, if no proven harm is done to students.

1 2 3 4 5

D

A

38. A guilty state of mind must exist for a secondary principal's act to be judged unprofessional.

1 2 3 4 5

D

A

39. Most secondary principals have viewed an act by another educator that they would classify as unprofessional.

1 2 3 4 5

D

A

40. Most secondary principals have viewed an act by another educator that they would deem worthy of consideration of suspension or revocation of a teaching certificate.

1 2 3 4 5

D

A

41. If a student's regular classroom teacher is unexpectedly replaced by a substitute that student's educational program will be unfavorably disrupted.

1 2 3 4 5

D

A

42. Collective bargaining laws have increased the need for Iowa's secondary principals to be concerned about the establishment and enforcement of professional standards and practices.

1 2 3 4 5

D

Please respond to the following statement by indicating your agreement or disagreement and the level of that agreement or disagreement.
169

For Example:

Strong agreement with a statement would be recorded as follows:

A
D 1 2 3 4 5

Strong disagreement with a statement would be recorded as follows:

A
 D 1 2 3 4 5

Moderate agreement with a statement would be recorded as follows:

A
D 1 2 3 4 5

A slight disagreement with a statement would be recorded as follows:

A
 D 1 2 3 4 5

And if you are indifferent to a statement, neither agree or disagree, record your response by circling both A and D as follows:

A
 D 1 2 3 4 5

1. The Iowa commission that rules on matters of educational professional ethics is The Iowa Commission of Educational Professional Standards and Practices.

A
D 1 2 3 4 5

2. Iowa's educators have knowledge of the commission designed to rule on educational professional standards and practices.

A
D 1 2 3 4 5

3. Iowa's educators have read the established criteria of professional standards and practices that they are required to conform to.

A
D 1 2 3 4 5

4. Iowa's educators understand the established criteria of professional standards and practices that they are required to conform to.

A
D 1 2 3 4 5

5. Educators are members of a profession.

A
D 1 2 3 4 5

6. Educators place an emphasis on service rendered to others rather than upon economic gain.

A
D 1 2 3 4 5

7. Educators believe in a code of ethics designed to stimulate exemplary performance.

A
D 1 2 3 4 5

- | | | | |
|-----|---|---|-----------|
| 8. | Educators desire to police their own ranks. | A | 1 2 3 4 5 |
| | 170 | D | |
| 9. | Educators believe that those that commit unethical and/or unprofessional acts should face suspension or revocation of their teaching certificates. | A | 1 2 3 4 5 |
| | | D | |
| 10. | Educators desire to limit access to their ranks in order to gain social and economic rewards. | A | 1 2 3 4 5 |
| | | D | |
| 11. | An educator that commits a felony that affects his or her ability to perform in the school environment commits an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 12. | An educator that commits a felony that does not affect his or her ability to perform in the school environment commits an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 13. | The conviction of an educator for a felony should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 14. | Instructional incompetence by an educator is an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 15. | Instructional incompetence by an educator should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 16. | Assignment of a noncertified teacher to a classroom by a school administrator is an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 17. | Assignment of a noncertified teacher to a classroom by a school administrator should be considered as grounds for suspension or revocation of the administrator's teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 18. | An educator's misappropriation of school funds is an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 19. | An educator's misappropriation of school funds should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |
| 20. | An educator's actions that arise out of anger constitute an unprofessional act. | A | 1 2 3 4 5 |
| | | D | |
| 21. | An educator's actions that arise out of anger should be considered as grounds for suspension or revocation of their teaching certificate. | A | 1 2 3 4 5 |
| | | D | |

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- | | |
|---|---------------------|
| 22. Educators that use others for personal gain commit an unprofessional act. | A
1 2 3 4 5
D |
| 23. An educator's use of others for personal gain should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 24. An educator found guilty of sexual acts with a child is guilty of an unprofessional act. | A
1 2 3 4 5
D |
| 25. An educator's sexual acts with a child should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 26. An educator's derogatory comments about students, parents, or other educators are unprofessional. | A
1 2 3 4 5
D |
| 27. An educator's derogatory comments about students, parents, or other educators are unprofessional. | A
1 2 3 4 5
D |
| 28. An educator's manipulation of the academic process; such as teaching procedures or grading procedures; to deal with student discipline matters is unprofessional. | A
1 2 3 4 5
D |
| 29. An educator's manipulation of the academic process; such as testing procedures or grading procedures; to deal with student discipline matters should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 30. An educator's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, is unprofessional. | A
1 2 3 4 5
D |
| 31. An educator's nonperformance of a teaching contract, a unilateral decision to leave a contract position without school board release, should be considered as grounds for suspension or revocation of their teaching certificate. | A
1 2 3 4 5
D |
| 32. Educational ethics require that a contract be honored, when required by either the educator or the school system, without regard to the grounds for request for release from the contract. | A
1 2 3 4 5
D |
| 33. Personal problems; such as marital difficulties or emotional stress; can serve as justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
1 2 3 4 5
D |
| 34. Professional advancement or enhancement of position are justifiable grounds for an educator's unilateral decision not to fulfill a contract. | A
1 2 3 4 5
D |

APPENDIX C. CHAPTER 272A, IOWA CODE

PROFESSIONAL TEACHING PRACTICES COMMISSION[640]

CHAPTER 1 GENERAL

- 1.1(272A) Definition
- 1.2(272A,17A) Organization and method of operation
- 1.3(272A,17A) Rulemaking—notice, hearing and adoption
- 1.4(272A,17A) Rulemaking without notice or hearing
- 1.5(272A,17A) Petition to promulgate, amend or repeal a rule
- 1.6(272A,17A) Declaratory rulings

CHAPTER 2 COMPLAINTS—RULES OF PRACTICE AND PROCEDURE BEFORE THE COMMISSION

- 2.1(272A) Parties involved
- 2.2(272A) Informal procedures
- 2.3(272A) Jurisdictional requirements
- 2.4(272A) The complaint
- 2.5(272A) Initial inquiry
- 2.6(272A) Ruling on the initial inquiry
- 2.7(272A) Service of the complaint and answer
- 2.8(272A) Action by the director prior to hearing
- 2.9(272A) The hearing
- 2.10(272A) Final and proposed decisions—content—conclusiveness—confidentiality
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- 2.12(272A, 17A) Motion for rehearing
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- 3.1(272A) Contractual and other legal obligations
- 3.2(272A) Conviction of crimes, sexual and other immoral conduct with or toward students and alcohol or drug abuse.
- 3.3(272A) Ethical practice toward other members of the profession, parents, students and the community

CHAPTER 4 CRITERIA OF COMPETENT PERFORMANCE

- 4.1(272A) General
- 4.2(272A) Scope of standards.
- 4.3(272A) Reserved
- 4.4(272A) Definitions
- 4.5(272A) Administrative and supervisory requirements
- 4.6(272A) Analysis of individual needs and individual potential
- 4.7(272A) Instructional procedures
- 4.8(272A) Communication skills
- 4.9(272A) Management techniques
- 4.10(272A) Competence in specialization
- 4.11(272A) Evaluation of learning and goal achievement
- 4.12(272A) Human and interpersonal relationships
- 4.13(272A) Personal requirements

CHAPTER 5 CONTRACT NONPERFORMANCE— RESIGNATIONS—COMPLAINT PROCEEDINGS

[Rescinded by Governor's Administrative Rules Executive Order No. 6 on 12/2/80]

CHAPTER 6 STUDENT DISCIPLINE—CORPORAL PUNISHMENT AND CONFINEMENT

[Rescinded by Governor's Administrative Rules Executive Order No. 7 on 12/2/80]

CHAPTER 1
GENERAL

640—1.1(272A) Definition. The Iowa Professional Teaching Practices Commission shall hereinafter be referred to as the commission.

This rule is intended to implement chapter 272A of the Code.

[Filed July 12, 1973]

640—1.2(272A,17A) Organization and method of operation.

1.2(1) *History.* The commission was created by the professional teaching practices Act of 1967 (chapter 238, 62nd G.A., chapter 272A of the Code).

1.2(2) *Composition.* The commission consists of nine members appointed by the governor, each for a three-year term. The statutory membership includes four classroom teachers, three school administrators, one faculty member of a facility approved for teacher education, and one member from the state department of public instruction. The commission functions under the elected leadership of a chairperson.

1.2(3) *Director.* The director is appointed by the commission and acts as executive head of the agency. The director is responsible for the administration of the commission.

1.2(4) *Major statutory function.* The commission is responsible for developing criteria relating to professional and ethical practices and competent performance and has jurisdiction to conduct hearings as to alleged violations of such criteria.

1.2(5) *Conduct of business.* The ordinary business of the commission is conducted at its regular monthly meetings generally held on the first Friday of the month at the Grimes State Office Building, Des Moines, Iowa.

1.2(6) *Information, submissions or requests.* General inquiries regarding the commission, requests for forms and other documents and all other requests and submissions may be addressed to the director, Grimes State Office Building, Des Moines, Iowa, 50319.

640—1.3(272A,17A) Rulemaking—notice, hearing and adoption.

1.3(1) Notice. The commission shall give notice of its intention to adopt, amend or repeal any rule by causing notice to be published in the Iowa Administrative Code at least thirty-five days in advance of the intended action. The notice shall set forth the specific terms of the intended action or where too voluminous, the notice shall set forth the subjects and issues involved, a summary of changes and the name and address of the person from whom a copy of the intended action can be obtained.

1.3(2) The notice of intended action shall include the name and address of a person to whom interested persons may present their views and arguments in writing and the times such views may be submitted. The person so designated shall receive, identify and review all submissions.

1.3(3) The notice shall include a statement that any interested person desiring to express or submit data, views or arguments at a public hearing must request the opportunity to do so. Also included in the notice shall be the statement that a public hearing shall be held if timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by a state agency or by an association having not less than twenty-five members.

1.3(4) When the commission or its director deems it in the best public interest to hold a public hearing on intended action or when there is reason to believe a public hearing will be requested by the requisite parties in 1.3(3), the notice of intended action may include notice of a public hearing. Such notice shall include, in addition to the other requirements of this rule, the time and place of the public hearing, and the manner in which interested persons may present data, views and arguments.

1.3(5) Requested public hearing. When timely requested in writing within twenty-five days of publication of the initial notice, by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by a state agency or by an association having not less than twenty-five members, the commission or its director shall hold a public hearing on the intended action which shall include the opportunity to make oral presentation prior to final action on the matter.

1.3(6) In the event a public hearing is to be held as a result of requests for a hearing under this rule, written notice of the pending hearing shall be given personally or by regular first class mail to those parties requesting the hearing. Notice shall also be published in the Iowa Administrative Code. Notice of a public hearing as a result of requests shall include notification that the public hearing is being held on request of the requisite parties in 1.3(3) and shall further include a description of the commission's intended action including the subjects and issues involved and if not too voluminous, a copy of the proposed action. If too voluminous, the notice may contain a summary of the proposed action and information as to where a copy can be obtained. The notice shall also contain the time and place of hearing and the manner by which data, views and arguments may be presented.

1.3(7) Public hearing—determination by commission or director. The commission or its director shall hold a public hearing on proposed action regarding rules when it has been determined that such action is in the best public interest or when it is reasonably anticipated that a public hearing will be requested under 1.3(3).

1.3(8) In the event it is deemed advisable to hold a public hearing, notice shall be given as provided in 1.3(6).

1.3(9) Conduct of hearing on rulemaking. The hearing shall be conducted by and be under the control of a presiding officer. The commission chairperson or the director or some other person designated by the chairperson shall be the presiding officer.

1.3(10) At the commencement of the hearing, any person wishing to submit data, views or arguments orally or in writing shall advise the presiding officer of the name, address,

and affiliation. The presiding officer shall provide an appropriate form for listing witnesses, which shall indicate the name of the witness, whether the witness favors or opposes the proposed rule, and such other information as may be required for the efficient conduct of the hearing. Any witness may be accorded the right to be accompanied, represented and advised by counsel.

1.3(11) Subject to the discretion of the presiding officer, the order of presentation shall be:

- a. Statement of proponents.
- b. Statement of opponents.
- c. Statements of any other witnesses present and wishing to be heard.

1.3(12) The presiding officer shall have the right to question or examine any witness making a statement at the hearing. The presiding officer may permit other persons to examine witnesses.

1.3(13) There shall be no rebuttal or additional statements given by any witness unless requested by the presiding officer, or granted for good cause. If such statement is given, the presiding officer shall allow an equal opportunity for reply.

1.3(14) The hearing may be continued with recesses as determined by the presiding officer until all witnesses present and wishing to make a statement have had an opportunity to do so.

1.3(15) The presiding officer shall, where practicable, receive all relevant physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibits. The exhibits shall be preserved until at least thirty days after adoption of the rule. In the discretion of the agency the exhibits shall be preserved for a period of one year after adoption of the rule or be returned to the party submitting the exhibit.

1.3(16) Record of hearing. A record shall be made of all of the proceedings, either in the form of minutes or a verbatim oral, written or mechanical record.

1.3(17) Written report. The person designated to receive written views from interested persons and the presiding officer at a public hearing shall, within a reasonable time, make a written summary of statements given and exhibits and data received.

1.3(18) Commission action. The proposed action to adopt, amend or repeal rules and the written report required by 1.3(16) shall be presented to at least a quorum of the commission for official action.

1.3(19) Filing rules—effective date. Following the adoption, amendment or repeal of rules by the commission, a certified copy of the action shall be filed in the office of the secretary of state. Rule changes acted upon by the commission shall become effective thirty-five days after filing and indexing and publication in the Iowa Administrative Code, unless a later date is specified in the rule in which case the later date controls. A rule change may become effective at an earlier time if subject to applicable Code provisions.

1.3(20) Termination of proceedings. In the event final commission action is not taken within one hundred eighty days following published notice or the last day of hearing on the proposed action, whichever is later, the proceedings on the proposed action shall terminate.

1.3(21) Statement of reasons. Upon final action taken upon a proposed rule change, the commission chairperson or director shall issue a statement of reasons for and against the action taken, incorporating therein the reasons for overruling considerations urged against the rule, if requested to do so by an interested person.

640—1.4(272A,17A.4(2)) Rulemaking without notice or hearing.

1.4(1) If the commission or its director for good cause finds that notice or public participation would be impracticable, unnecessary, or contrary to the public interest, rules can be formulated without notice and hearing in accordance with the applicable provisions of chapter 17A. The commission shall incorporate in each such rule the finding as to good cause and the reasons therefor.

640—1.5(272A,17A) Petition to promulgate, amend or repeal a rule.

1.5(1) An interested person or other legal entity may petition the commission requesting the promulgation, amendment or repeal of a rule.

1.5(2) The petition shall be in writing, signed by or on behalf of the petitioner and shall contain a detailed statement of:

a. The rule that the petitioner is requesting the commission to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in full with the matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or boldface.

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

d. Sufficient facts to show how petitioner will be affected by adoption, amendment or repeal of the rule.

e. The name and address of petitioner and of any other person known to be interested in the rule sought to be adopted, amended or repealed.

1.5(3) The petition shall be in typewritten or printed form, captioned **BEFORE THE PROFESSIONAL TEACHING PRACTICES COMMISSION**, and shall be deemed filed when received by the director.

1.5(4) Upon receipt of the petition the director shall:

a. Within ten days mail a copy of the petition to any parties named therein. Such petition shall be deemed served on the date of mailing to the last known address of the party being served.

b. Shall advise petitioner that petitioner has thirty days within which to submit written views.

c. May schedule oral presentation of petitioner's views if the commission so directs.

d. Shall, within sixty days after date of submission of the petition, either deny the petition or initiate rulemaking proceedings in accordance with this chapter.

1.5(5) In the case of a denial of a petition to promulgate, amend or repeal a rule, the commission or its director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

640—1.6(272A,17A) Declaratory rulings.

1.6(1) Petition for. Upon petition filed by any individual, partnership, corporation, association, governmental subdivision, private or public organization or state agency, the commission may issue a declaratory ruling as to the applicability of statutes and rules, policy statements, decisions and orders under its jurisdiction.

1.6(2) A petition for a declaratory ruling shall be typewritten or printed and at the top of the first page shall appear in capitals the words: **PETITION FOR DECLARATORY RULING BEFORE THE PROFESSIONAL TEACHING PRACTICES COMMISSION**.

1.6(3) The petition shall include the name and official title, if any, address and phone number of each petitioner. If the request is at the behest of an entity mentioned in 1.6(1) it shall name the entity.

1.6(4) The body of the petition shall contain:

a. A detailed statement of facts upon which petitioner requests the commission to issue its declaratory ruling.

b. The statute, rule, policy statement, decision or order for which a ruling is sought.

c. The exact words, passages, sentences or paragraphs which are the subject of inquiry.

d. The specific questions presented for declaratory ruling.

e. A consecutive numbering of each multiple issue presented for declaratory ruling.

1.6(5) The petition shall be filed either by serving it personally on the director or by mailing it to the director to the Grimes State Office Building, Des Moines, Iowa 50319.

1.6(6) Action on petition. The director shall acknowledge receipt of petitions or return petitions not in substantial conformity with the above rules.

1.6(7) The commission may decline to issue a declaratory ruling for any of the following reasons:

- a. A lack of jurisdiction.
- b. A lack of clarity of the issue presented.
- c. No clear answer determinable.
- d. The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.

1.6(8) In the event the commission declines to make a ruling, the director shall notify the petitioners of this fact and the reasons for the refusal.

1.6(9) When the petition is in proper form and has not been declined, the commission shall issue a ruling disposing of the petition within a reasonable time after its filing.

1.6(10) Rulings shall be mailed to petitioners and to other parties at the discretion of the director. Rulings shall be indexed and available for public inspection.

1.6(11) Effect of declaratory rulings. A declaratory ruling by the commission shall have a binding effect upon subsequent commission decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

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CHAPTER 2 COMPLAINTS—RULES OF PRACTICE AND PROCEDURE BEFORE THE COMMISSION

640—2.1(272A) Parties involved. The following definitions of parties involved in an investigation shall apply herein:

1. "*Commission*" shall mean the Iowa professional teaching practices commission.
2. "*Complainant*" shall mean any qualified party as defined in 2.4(272A) herein.
3. "*Respondent*" shall mean any individual(s) who shall be charged in a complaint with a violation of standards of professional ethics and practices.

640—2.2(272A) Informal procedures. Matters which do not conflict with section 272A.6 of the Code may be acted upon without a hearing and may be handled by correspondence.

2.2(1) *Informal settlement—waivers.* When a formal complaint has been filed under section 272A.6 and rule 2.4, the commission chairperson or the director shall make a determination as to the possibility of an informal settlement conference between the parties. If it is determined that such conference is possible, the director shall give notice as to the time and place of such conference by ordinary mail or by phone. The site of said conference shall be at a location suitable to the parties. Nothing in this rule shall be construed as requiring a party to participate in informal settlement procedures. An oral or written declination of informal settlement procedures constitutes a waiver of the provisions of this rule.

2.2(2) Reserved.

640—2.3(272A) Jurisdictional requirements.

2.3(1) The case must relate to alleged violation of standards of professional ethics and practices.

2.3(2) The magnitude of the alleged violation must be adequate to warrant a hearing by the commission.

2.3(3) There must be sufficient evidence to support the complaint.

2.3(4) As an additional factor, it should appear that a reasonable effort has been made to resolve the problem on the local level. However, the absence of such an effort shall not preclude investigation by the commission.

640—2.4(272A) The complaint.**2.4(1) Who may initiate.**

- a. Certified personnel or their recognized local or state professional organization.
- b. Local boards of education.
- c. Administrators, supervisors and other members of the teaching profession employed by a school district or other educational entity outside of Iowa.
- d. Parents or guardians of students involved in the alleged complaint.

2.4(2) Form and content of the complaint.

- a. The complaint shall be in writing and signed by at least one complainant or an authorized representative if the complainant is an organization. (Or an official form may be used. This form may be obtained from the commission upon request.)
- b. The complaint shall show venue as "BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION," and shall be captioned "COMPLAINT."
- c. The complaint shall contain the following information:
 - (1) The full name, address and telephone number of the complainant.
 - (2) The full name, address and telephone number, if known, of the respondent.
 - (3) A concise statement of the facts which clearly and accurately apprise the respondent of the alleged violation of professional ethics and practices, and shall state relief sought by the complainant.

2.4(3) Required copies—place and time of filing.

- a. In addition to the original, a sufficient number of copies of the complaint must be filed to enable service of one copy to each of the respondents and retention of ten copies for use by the commission.
- b. The complaint may be delivered personally or by mail to the director of the commission. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319.
- c. Timely filing is required in order to insure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

2.4(4) Amendment or withdrawal of complaint. A complaint or any specification thereof may be amended or withdrawn by the complainant at any time prior to notification of the respondent, and thereafter at sole discretion of the commission.

640—2.5(272A) Initial inquiry.

2.5(1) Investigation of allegations. In order to determine if probable cause exists for a hearing on the complaint, the director or someone designated by the director shall cause an investigation of the allegations of the complaint. In this regard, the person complained of shall be furnished a copy of the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint. This position or defense may be submitted in writing but a personal conference with the investigation official may be had as a matter of right upon request.

2.5(2) Investigation report. Upon completion of the investigation, the director or designee shall prepare a report for the commission's consideration, which report shall contain the position or defense of the respondent, discuss jurisdiction and set forth any legal arguments and authorities that appear applicable to the case. The report shall be concluded with a recommendation as to whether probable cause exists for further proceedings.

640—2.6(272A) Ruling on the initial inquiry.**2.6(1) Decision of the commission.**

a. Rejection. If a determination is made by the commission to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the commission shall be sent to the respondent.

b. Requirement of further inquiry. If determination is made by the commission to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. Acceptance of the case. If a determination is made by the commission to accept the case, a formal hearing shall be conducted in accordance with 2.7(272A) to 2.9(272A).
2.6(2) Reserved.

640--2.7(272A) Service of the complaint and answer.

2.7(1) Service of the complaint. The director shall send a letter of notification and a copy of the complaint, with any amendments, to the respondent by certified mail with return receipt. Attached thereto shall be a statement that respondent has the right to appear at a hearing and be heard and to submit an answer of the type specified in 2.7(3), that an answer or appearance must be submitted within twenty days after receipt of the complaint, and that failure to do so shall be deemed consent to whatever action the commission deems appropriate. Further, this statement shall notify the respondent that the commission shall determine the date, time, and place of hearing and notify respondent of same upon receipt of the answer.

Whenever the notice of complaint by certified mail with return receipt cannot be delivered to the respondent, because he refuses to receive or receipt for such mail, notice shall be given by publication in a newspaper of general circulation. A copy of all documents or instruments which are pertinent to or the basis of the proceeding, shall be mailed to the last known address of the respondent.

2.7(2) Form of an appearance.

a. The appearance shall show venue as "BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION" and shall be captioned "APPEARANCE."

b. The appearance shall show the following information:

(1) The name, address and telephone number of the respondent.
(2) That the respondent will submit his answer within ten days from the filing of the appearance unless granted an extension by the commission.

c. The commission may, upon good cause shown, grant the respondent additional time in which to file an answer.

2.7(3) Form of answer.

a. The answer shall show venue as "BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION" and shall be captioned "ANSWER."

b. The answer shall contain the following information:

(1) The name, address and telephone number of the respondent.
(2) Specific statements regarding any or all allegations in the complaint which shall be in the form of denials, explanatory remarks, or statements of mitigating circumstances.
(3) Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

640--2.8(272A) Action by the director prior to hearing.

2.8(1) Notice of hearing. The director shall send a notice of hearing to the complainant and the respondent by certified mail with return receipt. The notice shall contain the following information:

a. The date, time and place of hearing.
b. A statement that the party may be represented by legal counsel at the hearing.
c. A statement of the legal authority and jurisdiction under which the hearing is to be held.

d. A reference to the statutes and rules involved.

e. A short and plain statement of the matter asserted.

f. A statement requesting the respondent, within a period of ten days after receipt of the notice of hearing to:

(1) Acknowledge receipt of the notice of hearing.

- (2) State whether or not he will be present at the hearing.
- (3) State whether he will require an adjustment of date and time of the hearing, and
- (4) Furnish the commission with a list of witnesses he intends to have called.

2.8(2) Filing and serving exhibits prior to hearing. In any proceeding where detailed or complicated exhibits are to be used, the commission chairperson or director* may require any party to file and serve copies of such exhibits or other necessary information within a specified time in advance of the hearing in order to enable the other parties and the commission to study same and prepare cross-examination with references thereto.

2.8(3) Subpoenas—discovery. In connection with the initial inquiry set forth in 2.5, the commission is authorized by law to subpoena books, papers, records and any other real evidence to help it determine whether it should institute a contested case proceeding (hearing). After service of the hearing notification contemplated by 2.8, the following procedures are available to the parties in order to obtain relevant and material evidence:

- a. Commission subpoenas for books, papers, records and other real evidence will be issued to a party upon request. Application should be made to the director specifying the evidence sought. Subpoenas for witnesses may also be obtained.
- b. Discovery procedures applicable to civil actions are available to the parties in a proceeding under these rules.
- c. Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under 2.9. In discovery and subpoena matters the parties shall honor the rules of privilege imposed by law.
- d. The evidence outlined in section 17A.13(2) where applicable and relevant shall be made available to a party upon request.

640—2.9(272A) The hearing.

2.9(1) Opening and closing statements by parties. At the commencement of the hearing, each party, either in person or by counsel shall have the opportunity to present a written and oral opening statement which may summarize that party's position and evidence to be introduced. At the conclusion of the hearing, each party shall, either in person or by counsel, have the opportunity to present both a written and an oral closing statement which may include a summary of the evidence and testimony received.

2.9(2) Introductory statement to witnesses. Before giving testimony, each witness shall be informed of the commission membership present (hearing committee) of the identity of the primary parties or their representatives, and of the fact that all testimony is being recorded.

2.9(3) Hearing panel—administrative hearing officer—presiding officer—role of commission members at hearing.

a. A hearing may be conducted before the full commission or before a three member hearing committee appointed by the commission chairperson. A hearing may also be conducted by an administrative hearing office in accordance with section 17A.11.

b. When a hearing is held before the full commission or a three member hearing committee, the commission chairperson or someone designated by the chairperson shall act as the presiding officer. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

c. The presiding officer and other commission members have the right to conduct a direct examination at the outset of a witness's testimony or at a later stage thereof. Direct examination and cross examination by commission members is subject to objections properly raised in accordance with the rules of evidence noted in 2.9.

2.9(4) A record of proceedings. The hearing chairperson will insure that a record of the hearing proceedings is maintained by one of the following methods:

- a. Electronic recording.
- b. By a competent stenographer, or
- c. By a certified court reporter. However, the cost of preparing a transcript for the

*Printer's error

complainant or respondent paid by party requesting same. The recording or stenographic notes or transcription thereof shall be kept for a period of at least five years.

2.9(5) *Form of oath.* Whenever an oath is to be administered in any proceeding conducted by the practices commission, the person taking an oath shall raise his right hand and swear or affirm to the following oath or affirmation: "You do solemnly swear (or affirm) that the testimony (or, evidence) you are about to give in the proceeding now on hearing, shall be the truth, the whole truth, and nothing but the truth."

2.9(6) *Rules of evidence—documentary evidence—official notice.*

a. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The presiding officer shall, however, give effect to the rules of privilege recognized by law and to any other applicable exclusionary rule imposed by statutory or constitutional provisions.

b. Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

c. Subject to the above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

d. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original, if available. Accurate copies of the document offered at the hearing shall be furnished to those members of the commission sitting at the hearing and to opposing parties.

e. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross examination by any party as necessary for a full and true disclosure of the facts.

f. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the commission. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the commission determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

2.9(7) Reserved.

2.9(8) *Legal counsel.* The commission may appoint legal counsel to advise and counsel the hearing chairperson in the performance of his duties under 2.8(272A).

2.9(9) The hearing is open to members of the public. For reasons of space limitation, however, the presiding officer may regulate attendance.

640—2.10(272A) Final and proposed decisions—content—conclusiveness—confidentiality.

2.10(1) *Final decision.* When six or more members of the commission preside over the reception of the evidence at the hearing, its decision is a final decision and shall be entered in the minutes.

2.10(2) *Proposed decision.* If the hearing is conducted by a three member hearing committee as specified in 2.9(3), by an administrative hearing officer or by the commission director, the decision is a proposed decision and subject to the review provisions of 2.11.

2.10(3) *Content of decision.* A proposed or final decision shall be in writing or stated in the record and shall consist of the following parts:

a. A concise statement of the facts which support the findings of fact.

b. Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.

c. Conclusions of law which shall be supported by cited authority or reasoned opinion.

d. The decision or order which sets forth the action to be taken or the disposition of the case. The ruling may be any of the following:

- (1) That the respondent be exonerated.
- (2) That the respondent be warned or reprimanded.
- (3) A recommendation to the board of educational examiners that respondent's teaching certificate be revoked or suspended.

(4) An order containing other appropriate action within the commission's jurisdiction.

2.10(4) *Confidentially*. At no time prior to the release of the final decision by the commission shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

2.10(5) *Notification of decision*. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final or proposed decision or order either in person or by first class mail, or by phone if necessary to assure that the parties learn of the decision or order first.

640—2.11(272A,17A) Proposed decision—appeal to commission—procedures and requirements. A proposed decision as defined in 2.10(2) becomes a final decision unless appealed in accordance with the following procedure:

2.11(1) A proposed decision may be appealed to the full commission or a quorum thereof by a party to the decision who is adversely affected thereby. An appeal is commenced by serving on the commission's director, either in person or by certified mail, a notice of appeal within thirty days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

2.11(2) Within fifteen days after service of the notice of appeal, the appellant shall serve ten copies of the exceptions, if any, together with the brief and argument on the director. The appellant shall also furnish copies to each appellee by first class mail. Any appellee to the appeal shall have thirty days following service of exceptions and brief on the director to file a responsive brief and argument. Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the commission or its director.

2.11(3) Oral argument of the appeal is discretionary but may be required by the commission upon its own motion. At the times designated for filing briefs and arguments either party may request oral argument. If a request for oral argument is granted or such is required by the commission on its own motion, the director shall notify all parties of the date, time and place. The commission chairperson or a designated commission member shall preside at the oral argument and determine the procedural order of the proceedings.

2.11(4) The record on appeal shall be the entire record made before the hearing committee, administrative hearing officer or director.

640—2.12(272A,17A) Motion for rehearing. Within twenty days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies thereof shall be timely mailed to all other parties. The application shall be deemed denied if not granted within twenty days after service on the director.

640—2.13(272A,17A) Ex parte communications—bias. Ex parte communications and other matters tending to prejudice a contested hearing proceeding are prohibited by section 17A.17 of the Code. In keeping with this provision the following minimal requirements are applicable:

2.13(1) Individuals assigned to render a proposed or final decision or to make finding of fact or conclusions of law, shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, except upon notice and opportunity for all parties to participate. Such individuals may, however, communicate with

members of the commission and its director and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties. In any case, where it becomes necessary to communicate with a party on matters noted above, notice shall be given to all parties and a date, time and place set for a discussion of the matter.

2.13(2) Parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate. Any such prohibited communication shall be brought to the attention of the commission chairperson so it can be included in the record of the case.

2.13(3) Any party to a contested hearing proceeding may file an affidavit alleging personal bias or other disqualification of any individual participating in the making of a proposed or final decision. The assertion as to disqualification will be ruled upon as a part of the record of the case.

2.13(4) For a violation of this rule, the commission may hand down a decision adverse to the violating party; may suspend censure or reprimand; and may reprimand or dismiss commission staff members.

These rules are intended to implement chapter 272A of the Code.

[Filed 7/12/73; amendment filed 10/6/75—published 10/20/75, effective 11/24/75]

CHAPTER 3 CRITERIA OF PROFESSIONAL PRACTICES

640—3.1(272A) Contractual and other legal obligations.

3.1(1) *Statutory provisions.*

a. The commission recognizes the need for all members of the profession to be cognizant of the statutes of the state of Iowa which deal with contractual and other legal obligations. A violation of any of the school laws of Iowa constitutes a violation of the criteria of the Iowa professional teaching practices commission.

b. The commission recognizes its responsibility to investigate cases which involve contractual violations and obligations and make recommendations to the state board of educational examiners as provided for in section 272A.6, The Code. [Amendment published 10/29/80, effective 12/25/80 rescinded by Governor's Administrative Rules Executive Order No. 6 on 12/2/80]

3.1(2) *Written contracts.* The commission recognizes the need for a common basis upon which teachers and boards of education may agree. The effectiveness of a written contract will be dependent upon mutual confidence and good faith in which both parties enter into and agree. Boards of education have final authority and responsibility to enter into written contractual agreement.

640—3.2(272A) Conviction of crimes, sexual and other immoral conduct with or toward students and alcohol or drug abuse.

3.2(1) It is hereby deemed unprofessional and in violation of the criteria of this commission for a member of the teaching profession to be guilty of any of the following acts or offenses:

a. Fraud in the procurement or renewal of teachers' certificates as defined in section 260.6 of the Code.

b. The commission of or conviction for a public offence as defined by the Criminal Code of Iowa, provided that the offence is relevant to and affects teaching or administrative performance.

c. Sexual involvement with a minor student with the intent to commit or the commission of the acts and practices proscribed by the following provisions of the Criminal Code of Iowa: Sections 709.2—709.4, 709.8, 725.1—725.3.

d. Chronic abuse of or addiction to alcohol or other drugs, where such abuse or addiction affects performance of educational duties. Where drug addiction has been caused by the use of drugs under the directions of a physician, the commission shall allow a reasonable period of time for treatment before taking any action affecting the teachers' certificate.

3.2(2) Reserved.

640—3.3(272A) Ethical practice toward other members of the profession, parents, students and the community.

3.3(1) Principle I—commitment to the student. The educator measures his success by the progress of each student toward realization of his 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 his obligation to the student, the educator:

a. Shall not without just cause restrain the student from independent action in his pursuit of learning, and shall not without just cause deny the student access to varying points of view.

b. Shall not deliberately suppress or distort subject matter for which he bears responsibility.

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 he 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 him benefits under any program, nor grant any discriminatory consideration or advantage.

f. Shall not use professional relationships with students for private advantage.

g. Shall keep in confidence information that has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

h. Shall not tutor for remuneration students assigned to his classes, unless no other qualified teacher is reasonably available.

3.3(2) Principle II—commitment to the public. The educator believes that patriotism in its highest form requires dedication to the principles of our democratic heritage. He shares with all other citizens the responsibility for the development of sound public policy and assumes full political and citizenship responsibilities. The educator bears particular responsibility for the development of policy relating to the extension of educational opportunities for all and for interpreting educational programs and policies to the public. In fulfilling his obligation to the public, the educator:

a. Shall not misrepresent an institution or organization with which he is affiliated, and shall take adequate precautions to distinguish between his personal and institutional or organizational views.

b. Shall not knowingly distort or misrepresent the facts concerning educational matters in direct and indirect public expressions.

c. Shall not interfere with a colleague's exercise of political and citizenship rights and responsibilities.

d. Shall not use institutional privileges for monetary private gain or to promote political candidates or partisan political activities.

e. Shall accept no gratuities, gifts, or favors that might impair or appear to impair professional judgment, nor offer any favor, service, or thing of value to obtain special advantage.

3.3(3) *Principle III—commitment to the profession.* The educator believes that the quality of the services of the education profession directly influences the nation and its citizens. He therefore exerts every effort to raise professional standards, to improve his service, to promote a climate in which the exercise of professional judgment is encouraged, and to achieve conditions which attract persons worthy of the trust to careers in education. In fulfilling his obligation to the profession, the educator:

a. Shall not discriminate on the ground of race, sex, age, physical handicap, marital status, color, creed or national origin for membership in the profession, nor interfere with the participation or nonparticipation of colleagues in the affairs of their professional association.

b. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities.

c. Shall not use coercive means or promise special treatment in order to influence professional decisions of colleagues.

d. Shall withhold and safeguard information acquired about colleagues in the course of employment, unless disclosure serves professional purposes.

e. Shall not refuse to participate in a professional inquiry when requested by the commission.

f. Shall provide upon the request of the aggrieved party a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.

g. Shall not misrepresent his professional qualifications.

h. Shall not knowingly distort evaluations of colleagues.

3.3(4) *Principle IV—commitment to professional employment practices.* The educator regards the employment agreement as a pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. He believes that sound professional personnel relationships with governing boards are built upon personal integrity, dignity, and mutual respect. The administrator discourages the practice of the profession by unqualified persons. In fulfilling his obligation to professional employment practices, the educator:

a. Shall apply for, accept, offer, or assign a position or responsibility on the basis of professional preparation and legal qualifications.

b. The educator should recognize salary schedules and the salary clause of individual teacher's contract as a binding document on both parties. The educator should not in any way violate the terms of the contract.

c. Shall not knowingly withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.

d. Shall give prompt notice to the employing agency of any change in availability of service, and the employing agent shall give prompt notice of change in availability or nature of a position.

e. Shall adhere to the terms of a contract or appointment, unless these terms have been legally terminated, falsely represented, or substantially altered by unilateral action of the employing agency.

f. Shall not delegate assigned tasks to unqualified personnel.

g. Shall use time or funds granted for the purpose for which they were intended.

3.3(5) *Principle V—commitment of commission members and staff.* The commission members and staff will be independent and impartial and not use the public office for private gain. In fulfilling his obligation the commission employees will not:

- a. Receive any remuneration for his services, other than that payable by law.
- b. Solicit, accept, or agree to accept any gifts, loans, gratuities, discounts, favors, hospitalities or services from anyone with vested interests.
- c. Disclose confidential information garnered from his official duties.
- d. Solicit, accept or agree to accept compensation contingent upon commission actions.
- e. Hold positions, perform duties, or engage in activities not compatible with his official capacity.

These rules are intended to implement chapter 272A of the Code.

[Filed July 12, 1973]

[Filed 1/17/78, Notice 11/2/77—published 2/8/78, effective 3/15/78]

[Filed without Notice 6/8/78—published 6/28/78, effective 8/15/78]

[Filed 10/8/80, Notice 4/30/80—published 10/29/80, effective 12/5/80]

[Amendment to subrule 3.1(1), paragraph "b" rescinded by Governor's Administrative Rules Executive Order No. 6 on 12/2/80—published 12/24/80]

CHAPTER 4

CRITERIA OF COMPETENT PERFORMANCE

640—4.1(272A) **General.** The standards listed in this chapter are held to be generally accepted minimal standards within the teaching profession in Iowa with respect to competent performance and therefore are declared to be the criteria of competency adopted pursuant to the provisions of section 272A.6 of the Code. In this respect, professional incompetence is a ground for filing a complaint with the commission on the issue of certificate revocation or suspension. A final administrative or judicial determination of incompetence in chapter 279 proceedings, Iowa Code, should prompt careful review and consideration on the issue of whether a complaint should be filed.

640—4.2(272A) **Scope of standards.** The standards set forth herein shall apply to all certificated educators.

In this regard, no finding of professional incompetency shall be made except where a preponderance of evidence exists as to such incompetency.

640—4.3(272A) **Reserved.**

640—4.4(272A) **Definitions.** As used herein the following words and terms have these meanings:

1. *Administrative and supervisory personnel.* Any certificated employee such as superintendent, assistant superintendent, principal, assistant principal, or other supervisory or administrative personnel who does not have as a primary duty the instruction of pupils in the schools.
2. *Available.* That which can be used or obtained.
3. *Communication skills.* The capacity, ability, or act of giving, or giving and receiving, through any of the senses, information, ideas, and attitudes.
4. *Competent.* The ability or fitness to discharge the required duties.
5. *Designated task.* The duty or assignment for which the individual is responsible at any given time.
6. *Diagnosis.* Identification of needs, strengths and weaknesses through examination, observation and analysis.
7. *Educator.* Any person engaged in the instructional program including those engaged in teaching, administering and supervising and who are required to be certificated.
8. *Effective.* Producing a definite, desired result.
9. *Management.* Controlling, supervising and guiding the efforts of others.
10. *Policy.* Authorized written and dated expressions of intent by the school board which have been communicated to the educator and which reflect the general principles guiding the efforts of the school district toward approved goals.

11. *Reasonable.* Just; proper. Ordinary or usual. Fit and appropriate to the end in view.
12. *Teacher.* Any certificated employee who is regularly employed for the instruction of pupils in the schools, and all other certificated persons not defined in "1" above.

640—4.5(272A) Administrative and supervisory requirements of educators.

4.5(1) Competent educators must possess the abilities and skills necessary to perform the designated task. Each educator shall:

1. Keep records for which he or she is responsible in accordance with law and policies of the school district.
2. Supervise district students and school personnel in accordance with law and policies of the school district.
3. Recognize the role and function of community agencies and groups as they relate to the school and to her or his position, including but not limited to health and social services, employment services, community teaching resources, cultural opportunities, educational advisory committees, and parent organizations.

4.5(2) Each teacher shall:

- a. Utilize appropriate and available instructional materials and equipment necessary to accomplish the designated task.
- b. Adhere to and enforce lawful policies of the school district which have been communicated to the teacher.
- c. Use available channels of communication when interacting with administrators, community agencies, and groups in accordance with school district policy.

4.5(3) Each administrator shall:

- a. Use appropriate and available instructional personnel, materials, time, encouragement and equipment necessary to accomplish the designated task in fulfillment of the goals of the school district.
- b. Adhere to and enforce school law, state board regulations, and school district policy which has been communicated to the administrator.
- c. Use available channels of communication when interacting with teachers, community agencies and groups in accordance with school district policy.
- d. Shall establish and use consistent management techniques to accomplish the designated task pertaining to scheduling, finance, public relations and personnel.

640—4.6(272A) Analysis of individual needs and individual potential. The competent educator shall utilize or promote the utilization of appropriate diagnostic techniques adopted by the school district to analyze the needs and potential of individuals.

Among others, the following techniques should be considered:

1. Personal observation.
2. Analysis of individual performance and achievement.
3. Specific performance testing.

640—4.7(272A) Instructional procedures. Each competent educator shall seek accomplishment of the designated task through selection and utilization of appropriate instructional procedures.

4.7(1) Each educator shall:

- a. Create an atmosphere which fosters interest and enthusiasm for learning and teaching.
- b. Use procedures appropriate to accomplish the designated task.
- c. Encourage expressions of ideas, opinions and feelings.

4.7(2) Each teacher shall:

- a. Create interest through the use of available materials and techniques appropriate to varying abilities and background of students.
- b. Consider individual student interests and abilities when planning and implementing instruction.

4.7(3) Each administrator shall:

a. Support the creation of interest by providing the materials and equipment, within the scope of available resources, time, and encouragement necessary for the teacher to accomplish the designated task.

b. Make reasonable assignment of tasks and duties in light of individual abilities and specialities as designated by appropriate endorsements and approvals granted by the state.

640—4.8(272A) Communication skills. In communicating with students, parents and other educators each competent educator, within the limits prescribed by her or his assignment and role, shall:

1. Utilize information and materials that are relevant to the designated task.
2. Use language and terminology which are relevant to the designated task.
3. Use language which reflects an understanding of the ability of the individual or group.
4. Assure that the designated task is understood.
5. Use feedback techniques which are relevant to the designated task.
6. Consider the entire context of the statements of others when making judgments about what others have said.
7. Encourage each individual to state her or his ideas clearly.

640—4.9(272A) Management techniques. The competent educator shall:

1. Resolve discipline problems in accordance with the law, school district policy, and administrative regulations and policies.
2. Maintain consistency in the application of policy and practice.
3. Use management techniques which are appropriate to the particular setting such as group work, seat work, lecture, discussion, demonstration, individual projects and others.
4. Develop and maintain positive standards of student conduct.

640—4.10(272A) Competence in specialization. Competent educators shall:

1. Possess knowledge within their area of specialization consistent with their record of professional preparation.
2. Be aware of current developments in their field.
3. Possess knowledge of resources which may be utilized in improving instruction in their area of specialization.

640—4.11(272A) Evaluation of learning and goal achievement. A competent educator accepts responsibility commensurate with delegated authority to evaluate learning and goal achievement, and the competent educator shall:

1. Utilize appropriate types of evaluation techniques.
2. Utilize the results of evaluations for planning, counseling and program modification.
3. Analyze and interpret evaluations effectively for the purpose of improving instruction.
4. Explain methods and procedures of evaluation to those concerned.
5. Provide frequent and prompt feedback concerning the success of learning and goal achievement efforts.

640—4.12(272A) Human and interpersonal relationships. Competent educators maintain effective human and interpersonal relations skills and therefore:

1. Shall encourage others to respect, examine, and express differing opinions or ideas.
2. Shall not knowingly misinterpret the statements of others.
3. Shall not show disrespect for or lack of acceptance of others.
4. Shall provide leadership and direction for others by appropriate example.
5. Shall offer constructive criticism when necessary.
6. Shall comply with requests given by and with proper authority.
7. Shall not assign unreasonable tasks.
8. Shall exercise discretion and reasonable judgment in the use of authority.

640—4.13(272A) Personal requirements. In assessing the mental or physical health of educators, no decision adverse to the educator shall be made by the commission except on the testimony of personnel competent to make such judgment by reason of training, licensure and experience in professions, a significant concern of which is the study, diagnosis and treatment of physical or mental health. However, each competent educator within the scope of delegated authority shall:

1. Be able to engage, except when temporarily disabled, in physical activity appropriate to the designated task. The term "temporarily disabled" covers physical and mental conditions. No adverse decision will be rendered by the commission against a temporarily disabled educator solely for that reason, and the issue as to the nature of an alleged disability shall be decided in the same manner as set forth in paragraph immediately above.
 2. Be able to communicate effectively so as to accomplish the designated task.
 3. Appropriately control emotions, the expression of which are likely to interfere with the designated task or be detrimental to the learning process and to otherwise compromise the educator's effectiveness.
 4. Possess and demonstrate sufficient intellectual ability to perform designated tasks.
- These rules are intended to implement section 272A.6 of the Code.

[Filed 1/17/78, Notice 11/2/77—published 2/8/78, effective 3/15/78]

**CHAPTER 5
CONTRACT NONPERFORMANCE—RESIGNATIONS—COMPLAINT
PROCEEDINGS**

[Filed 10/8/80, Notice 4/30/80—published 10/29/80, effective 12/5/80*]
[Rescinded by Governor's Administrative Rules Executive Order No. 6 on
12/2/80—published 12/24/80]

**CHAPTER 6
STUDENT DISCIPLINE—CORPORAL PUNISHMENT AND CONFINEMENT**

[Filed 10/8/80, Notice 4/30/80—published 10/29/80, effective 12/5/80**]
[Rescinded by Governor's Administrative Rules Executive Order No. 7 on
12/2/80—published 12/24/80]

*Effective date of chapter 5 delayed seventy days by the administrative rules review committee.
**Effective date of chapter 6 delayed seventy days by the administrative rules review committee.

APPENDIX D. IPTPC HEARING RECORD 77-19

IOWA PROFESSIONAL TEACHING

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PRACTICES COMMISSION

Area I Vocational)	
Technical School,)	
Complainant)	CASE NO. 77-19
)	
vs.	)	HEARING DECISION
)	
Thomas Lindahl,)	
Respondent)	

STATEMENT

The instant complaint, alleging noncompliance with a Section 279.13 contract, was filed on October 21, 1977. Following inquiry, it was assigned for hearing on January 13, 1978, and was heard on that date. The complainant was represented by Darwin Schrage and Clyde Kramer. Mr. Lindahl represented himself and examined one witness, Dr. Harold Crawford, on his behalf. Predicated on the pleadings, the hearing testimony and the documentary evidence, no substantial or material dispute exist between the parties as to the factual basis for our disposition. Accordingly, we recite only such facts as our necessary to support this decision.

On March 24, 1977, the respondent executed a Section 279.13 contract, wherein he agreed to perform teaching services for the complainant during the 1977-1978 term, such services to begin on July 1, 1977 (hearing exhibit 1). By letter dated August 1, 1977, the respondent, citing "personal reasons", proffered a written resignation to be effective September 2, 1977 (hearing exhibit 2). While the reasons underlying exhibit 2 are not explicit, it is clear from the entire hearing record that Lindahl's position was that his spouse was suffering from a depressive illness which, according to medical suggestion, might be helped by a geographical change (hearing exhibits A and B). He said he had secured a teaching position in Wisconsin seemingly to make that move possible. It is further clear from the record (Schrage and Kramer testimony) that at the time of the resignation letter the alleged health problems were known to the complainant (compare hearing exhibit 4 - especially comments by Superintendent Joss). While it is not explicit, the record contains inferences that school staff were not only aware of Lindahl's alleged motivation for leaving but to some extent felt they were aware that Mrs. Lindahl was ill or having problems.

On August 9, 1977, complainant's board took action to grant the respondent a release, providing a suitable replacement could be obtained (hearing exhibit 3). At its September meeting (exhibit 4), it was noted that legally Lindahl had breached his contract by departing without a replacement and that for the sake of precedent action may be warranted. On October 3, 1977, such action resulted in this proceeding (hearing exhibit 5).

The respondent concedes the validity of the contract in issue and admits he departed the school without a release and prior to its expiration. He contends, however, that he was either legally excused or justified in leaving because of his spouse's health. As to this issue, Lindahl testified that during the relevant time period his wife was afflicted with a depressive illness, the severity of which required inpatient treatment more than once. He said that in 1977 he was advised by Dr. Philip Hastings, the attending doctor, Northeastern Psychiatric Clinic, Waterloo, Iowa, that it might be beneficial to her if he moved the family to a new community. The respondent's exhibits A and B are statements signed by Dr. Hastings which were introduced subject to the stipulation that their purpose was to show the nature of what Dr. Hastings would testify to if present. Exhibit B reads as follows:

"At the request of Mr. Lindahl, I am writing to give you some more details as a followup to my previous letter of 12-21-77.

"Mr. Lindahl's wife, Lee Ann, was hospitalized under my care for treatment of a major mental illness in the Psychiatric Unit of Allen Memorial Hospital from 8-17-77 until 9-30-77. During her hospitalization I, or one of my professional associates, counseled with Mr. Lindahl on a number of occasions and specifically encouraged him to go ahead with his move to Minnesota, as we felt it would be in the best interest of his wife's mental health."

Mr. Lindahl's alleged perception of the health issue finds further support in the testimony of his witness, Dr. Harold Crawford, Ph.D., ISU, and from complainant's own testimony. In the latter respect, it is clear that school staff were aware of an alleged health problem and at the hearing there were no efforts to attack the creditability or veracity of the defense or its supporters. Accordingly, we find that in the summer of 1977 Mrs. Lindahl was ill and her husband, in good faith, believed it was in her interest and that of the family to move. The remaining issue is the effect of those facts on this proceeding.

In prior cases we have ruled that post contract conditions can arise which may provide some justification or excuse for noncompliance, at least to the extent that the defaulting party will not be subject to suspension or loss of certificate. See e.g., Nevada Board vs. Edel, 75-2, May, 1975; Egel Grove Schools vs. Knudsen, 75-7, September 1976; L. J. Dodd vs. Harmsen, 75-10, April 1977. In the Knudsen case the educator under contract left the state to take up residence with her newly acquired spouse. We recognized that the policy supporting marital union negated drastic action by the commission.

¹The health issue is in the nature of a defense to the charge of noncompliance. The respondent also attempts to show efforts to mitigate damages arising out of noncompliance - e.g., assistance to the temporary replacement and offers to return weekly to the campus. In view of our disposition it is not necessary to evaluate the effect of these efforts.

In all three of the cited cases we¹⁹⁵ did censure the educator involved. We have always assumed, however, that if an educator's nonperformance were caused by illness he or she would be legally (or equitably) excused from the contract. We hold this rule is applicable where an educator's non-performance results from the good faith belief that illness of an immediate family member requires it. cf. Knudsen, supra.

As previously indicated, the good faith requirement was established in this case. Accordingly, the commission voted, 6-0 (Williams, Parkin and Burgess absent) to dismiss and the case is dismissed.

Post Hearing Bias Claim

Subsequent to the hearing and prior to completion of a written decision as required by Section 17A.16 of the Code, the complainant's chief administrator, Charles Joss, communicated with our director (letter January 17, 1978). He noted that he was at the hearing; that it was interesting; and that he wanted the following information:

"What is your [director's] function as . . . legal advisor? Is there a job description . . . of your assignment in relation to the commission? I do have some questions about procedure."

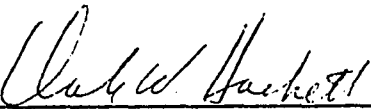
On January 20, 1978, Mr. Bennett provided Joss with relevant statutory and rule citations, at which time Joss informed Bennett that he had conducted himself at the hearing in an obviously partial manner favorable to respondent Lindahl. As but one example, he asserts that during the hearing Bennett intimated that school staff got together and "put it to him" [Lindahl]. Predicated on all posthearing communications, an inference may arise as to our impartiality and the effect of such communications under Section 17A.17 of the Code.

At the inception, it must be noted that Mr. Joss, the prime agent of the complainant, was present at the hearing. If he observed or heard anything prejudicial to his client he had the authority to and should have vigorously objected. Moreover, as far as we know he never requested Mr. Schrage or Mr. Kramer to do so, since this issue was never raised.

Secondly, in accordance with Section 272A.5 of the Code and Rule 640-2.9(8), Iowa Administrative Code, Mr. Bennett provides broad legal assistance in relation to Chapter 272A hearings, including preliminary work on the written decision as required by Section 17A.16. His overall function may (in spirit if not literally), place him within the "communication proscription" of Section 17A.17. This is one of the reasons the director transmitted this decision pending communication for inclusion in the record-see 17A.17(2).

Finally, assuming arguendo the existence of partiality as complained of, it would be absurd on this record to argue that the commission's action is contaminated by staff prejudice. The evidence as to mental

illness and the felt need to move is substantial, creditable and not seriously challenged by complainant. Given the evidence and our prior rulings, we experienced no difficulty in reaching this decision and without the need of legal assistance from Mr. Bennett.



Dale W. Hackett, Chairman

Jan. 27, 1978

APPENDIX E. IPTPC HEARING RECORD 79-7

IOWA PROFESSIONAL TEACHING
PRACTICES COMMISSION
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Parkersburg Community Schools, Complainant)	Case 79-7
)	
vs.)	
)	
David Altman, Respondent)	HEARING DECISION
)	

STATEMENT OF CASE

The instant complaint, alleging nonperformance of a Code Chapter 279 teaching agreement, was filed on June 26, 1979. Though requested by the commission, no informal response to its allegations was furnished by respondent. Following inquiry and staff recommendation the matter was set for evidential review on October 19, 1979, and hearing notification to that effect was served on the parties. On October 15, 1979, Respondent filed his formal Answer wherein he conceded the truth and accuracy of the allegations and stated he would not attend the hearing. At 1:00 p.m. on October 19, 1979, Superintendent Garner appeared for Parkersburg and no one appeared for Respondent.

STATEMENT OF FACTS

Exhibit "1" is a copy of the teaching contract in issue, dated April 5, 1979, wherein for a consideration of \$16,027 Altman agreed to perform teaching service during the 1979-80 term. Services were to begin on July 2, 1979. Noting a new job with Land O Lakes, Altman by letter of May 5, 1979, proffered a resignation effective July 1, 1979 (Exhibit "2"). Exhibits "3" and "4" reflect action by the school board in May and June to the effect that it would not relieve Altman from the liabilities of the contract, including proceeding against the teacher before this commission (Exhibit "5").

Superintendent Garner testified that Altman did not appear for service under the contract; that the board had not released him from the obligations of that agreement; and that in connection with the districts resignation policy Altman had paid about \$130 newspaper costs.

FINDINGS OF FACT

1. The commission finds that in accordance with the facts alleged in the pleadings and from the evidence before it, jurisdiction exists as to all parties and as to the subject matter of this case.
2. It is further found that on July 2, 1979, the respondent was under a valid contract to the district but failed to report to work on that day or on any day thereafter.
3. It is also found that the respondent was not released from his teaching contract either in fact or by operation of law.

4. It is additionally found that no legal or other substantial excuse existed for the unilateral termination of the contract.
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5. It is finally found that the respondent took no action or performed any deed of the kind or nature that is commonly recognized as in mitigation of a breach of contract.

CONCLUSIONS OF LAW

Section 279.13 of the 1977 Code of Iowa authorizes teaching contracts and specifies the conditions and the term of such contracts. Section 272A.6, in outlining the commission's jurisdiction, provides as follows:

"The commission shall have the responsibility of developing criteria of professional practices including, but not limited to, such areas as: (1) Contractual obligations . . ."

Section 272A.5 of the Code provides that the commission shall have authority to develop standards and adopt rules and regulations. A portion of such rules and regulations applicable to this hearing are Sections 3.1(1), 3.1(2) and 3.3(4), which read in part as follows:

"3.1 Contractual and other legal obligations.

"3.1(1) Statutory provisions.

"a. The commission recognizes the need for all members of the profession to be cognizant of the statutes of the State of Iowa which deal with contractual and other legal obligations. A violation of any of the school laws of Iowa constitutes a violation of the criteria of the Iowa Professional Teaching Practices Commission.

"b. The commission recognizes its responsibility to investigate cases which involve contractual violations and obligations and make recommendations to the State Board of Educational Examiners as provided for in Chapter 272A.6 of the Iowa Code.

"3.1(2) Written contracts. The commission recognizes the need for a common basis upon which teachers and board of education may agree. The effectiveness of a written contract will be dependent upon mutual confidence and good faith in which both parties enter into and agree.

X X X

3.1(4) Principle IV--commitment to professional employment practices. The educator regards the employment agreement as a pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. He believes that sound professional personnel relationships with governing boards be built upon personal integrity, dignity, and mutual respect."

DISCUSSION

In prior cases we have articulated the rule that in general nonperformance of a Code Chapter 279 contract violates our contractual criteria and is unprofessional. There are, of course, exceptions to this rule but in several cases

we have said that the desire for profit or an enhanced position is no excuse or justification under Chapter 272A of the Code or our rules. See Lewis Central vs. Higdon, 76-11. Accordingly, the nonperformance here falls within those cases and is unprofessional.

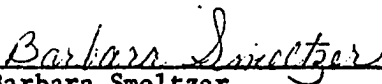
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While Altman was not present and did not raise the issue, we should comment on one matter. The record may give the appearance that at the time of the contract (7-2-79) a replacement was available to perform Altman's duties. There is nothing to show, however, that the board granted a release subject to a suitable replacement. In prior cases some agency members have held that if a replacement were available on the inception contract date this should be considered. Moreover, we are currently looking at the issue as a part of proposed rules concerning contract nonperformance proceedings. But to present date a majority of the commission has ruled that in the absence of discriminatory practices or unless the board has conditioned release on a replacement, the issue is not relevant.

DECISION

A majority of the commission (Glass, Hackett, Lemke and Smeltzer) voted to take action under Section 272A.6 of the Code to cause suspension of respondent's teaching certificate through June 30, 1981. Knott, Burgess and Hoobler dissented; Williams and Paulsen absent.

November 11, 1979



Barbara Smeltzer
Chairperson

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION
(Cite as 1 D.P.I. Dec. 68)

In The Matter Of :
:
David Altman :
:
: PROPOSED DECISION
Teaching Certificate :
:
Number 175910 :
: [Admin. Doc. 530]

The above entitled matter was heard on March 17, 1980, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, school administration; and Mr. David Bechtel, administrative assistant. Dr. David Alvord, consultant, data analysis and statistical section, served as the Advocate. David Altman was not present nor represented. The hearing was held pursuant to Section 272A.6, The Code 1979, and Chapter 670--50, Iowa Administrative Code.

The Iowa Professional Teaching Practices Commission (hereinafter Commission) found Mr. Altman in violation of its rules related to professional conduct and recommended that a hearing be conducted by the State Board of Educational Examiners and at the conclusion thereof, the Board suspend Mr. Altman's teaching contract.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Educational Examiners have jurisdiction over the parties and subject matter.

On or about April 5, 1979, David Altman entered into a continuing teaching contract with the Parkersburg Community School District (hereinafter District) for the 1979-80 school year. The contract was an extended teaching contract and was to cover 240 days. Duties under the contract were to begin on July 2, 1979. In a letter to the District Board of Directors dated May 5, 1979, Mr. Altman requested that his resignation be accepted effective July 1, 1979. He indicated in the letter that he had accepted a position in private business with his new employment responsibilities commencing on July 1, 1979.

On May 14, 1979, at a regular meeting, the District Board of Directors voted to not accept the resignation of Mr. Altman. The District Policy regarding resignations reads in relevant part as follows:

Teachers who have signed a teaching contract with the Parkersburg Community School may be released from their contract obligations with the Board approval because of spouse changing residence, maternity situations, and other reasons deemed acceptable by the Board of Education.

Teachers who break their contract for the purpose of securing another position either in the teaching field or outside of the field of education shall be processed through the Professional Standards Board or D.P.I. for breaking contract. This processing may be waived by the Board if it is felt by the Board to be in the best interest of the school to accept a particular resignation.

Any release that is granted by the Board will be given only after a suitable replacement has been secured. A replacement fee may be charged to any teacher seeking a release from their contract.

On June 11, 1979, the District Board of Directors again took up the matter of Mr. Altman's resignation. At that meeting, the District Board of Directors reversed its earlier decision and voted to accept the resignation. The motion to accept the resignation contained the following relevant terms:

. . . with the understanding that this acceptance is only to eliminate the legal dilemma the school would have in approving his replacement. The intent of this acceptance does not eliminate the processing of policy 402.4 for a teacher breaking contract for the purpose of securing another position.

During this time period and before the time for performance under the contract, a replacement was secured for Mr. Altman's position and he alleged in his answer to the District's complaint before the Commission that he had aided in securing the replacement. He did pay \$132.50 to defray the costs of advertising for a replacement.

Mr. Altman did not perform professional services for the District on July 2, 1979, or any date thereafter.

II.
Conclusions of Law

Pertinent statutory and rule provisions are:

Commission Rules provide a standard of conduct regarding teaching contract obligations. These rules are found at 640--3, Iowa Administrative Code.

- 3.1 Contractual and other legal obligations.
- 3.1(1) Statutory provisions.
 - a. The commission recognizes the need for all members of the profession to be cognizant of the statutes of the State of Iowa which deal with contractual and other legal obligations. A violation of any of the school laws of Iowa constitutes a violation of the criteria of the Iowa professional teaching practices commission.
 - b. The commission recognizes its responsibility to investigate cases which involve contractual violations and obligations and make recommendations to the state board of educational examiners as provided for in chapter 272A.6 of the Iowa Code.

3.1(2) Written contracts. The commission recognizes the need for a common basis upon which teachers and boards of education may agree. The effectiveness of a written contract will be dependent upon mutual confidence and good faith in which both parties enter into and agree. Boards of education have final authority and responsibility to enter into written contractual agreement.

3.3(4) Principle IV--commitment to professional employment practices. The educator regards the employment agreement as a pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. He believes that sound professional personnel relationships with governing boards are built upon personal integrity, dignity, and mutual respect. . . .

Section 272A.6, The Code 1979, provides that criteria promulgated by the Commission may, upon a finding of a violation, be used by the Board of Educational Examiners as a legal basis for the suspension or revocation of a teaching certificate.

272A.6 . . . A violation, as determined by the commission following a hearing, of any of the criteria so adopted shall be deemed to be unprofessional practice and a legal basis for the suspension or revocation of a certificate by the state board of educational examiners.

The Hearing Panel is somewhat concerned with the Commission's recommendation to suspend Mr. Altman's teaching certificate through June 30, 1981. While the State Board of Educational Examiners does not condone unilateral resignations from contracts by professional educators, we feel that the serious action of suspension of a teaching certificate should rest upon more detriment to a district than has been shown us upon the facts present here. Mr. Altman resigned before the end of the previous school year, nearly two months prior to the date he was to begin performance under the contract, aided in locating a replacement and paid the costs of the District in advertising for a replacement. His actions, coupled with the facts that a replacement was timely secured and that the District Board of Directors did, by motion, actually release him from his contract on June 11, lead us to the unmistakable conclusion that a lesser penalty than suspension of certificate is appropriate on the facts before us. In the absence of clear authority for this Panel to reprimand, or impose a less severe penalty than that recommended by the Commission, our only recourse is to dismiss the recommendation filed by the Commission. See In The Matter Of Francis Shafer, 1 D.P.I. Dec. 31. We do not agree with the majority of the Commission members, that teachers who are legally released from their contractual obligations should be severely punished for their actions when no greater detriment is shown the local school district than has been shown here.

III.
Proposed Decision

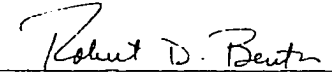
The Hearing Panel finds that the recommendation of the Iowa Professional Teaching Practices Commission to suspend the teaching certificate of David Altman is not sustained, and the matter is hereby dismissed.

IV.
Note on Finality of Decision

The proposed decision shall become final within thirty (30) days of the issuance of this proposed decision, if not reviewed upon the motion of or appealed to the State Board of Educational Examiners.

April 9, 1980

DATE



ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. Dec. 72)

In The Matter Of

:

David Altman

:

:

:

DECISION

Teaching Certificate

:

:

Number 175910

:

[Admin. Doc. 430]

The Parkersburg Community School District appealed the decision of the Hearing Panel in the above entitled matter. The State Board of Educational Examiners heard the appeal at its regular meeting on June 26, 1980. The Board of Educational Examiners voted to affirm the decision of the Hearing Panel.

June 27, 1980

DATE

Susan M. Wilson

SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

APPENDIX F. IPTPC HEARING RECORD 77-10

IOWA PROFESSIONAL TEACHINGPRACTICES COMMISSION

)	
)	
Mr. and Mrs. Clarence Bergmann,	)	Case 77-10
Et. al.,)	
)	
Complainants	)	ORDER
)	
vs.)	
	)	of Dismissal
Leon Kirchhoff,	)	with Censure
)	
Respondent)	

Jurisdiction

The respondent is an educator in the Tripoli School District and is certified by the state. The Bergmanns and the other complaining parties are all parents with children in the Tripoli system, all of which have been involved with the respondent as a teacher. The complainants allege that during the 1976-1977 school year, and on one or more prior occasions, Mr. Kirchhoff subjected their children to unprofessional practices in violation of our rules. In accordance with these facts and allegations the commission has jurisdiction of the case.

Statement of the Case

While the complaint is separated into six parts (in accordance with the identity of the complaining parties), it collectively contains but three major allegations:

(1) The respondent engaged in a discriminatory and unfair practice in denying the use of class notes to some of complainants' children in connection with a final exam, the use of such notes being accorded to other students.

(2) The respondent during the course of classroom sessions used derogatory and humiliating names (e.g. "retards") in reference to some or all of complainants' children.

(3) The respondent performed unprofessionally in failing some of complainants' children, one or more times.

Perhaps there are one or two other minor allegations (e.g., denying a textbook for a time) but they are of little relevance and won't be considered.

The initial inquiry into this matter convinces us that a hearing before the commission would be unwarranted. In the first place, the factual basis of one or two of the complaints is admitted by Mr. Kirchhoff, at least in substance. An example is the denial of use of class notes during a final exam. These matters which are substantially without dispute will be disposed of in this order and, in our view, don't deserve or require a hearing. Secondly, as to those allegations that are strongly disputed (mainly the derogatory namecalling), we have concluded that there has not been a substantial showing of probable cause to warrant a hearing. In the inquiry we interviewed a number of "disinterested" persons (including students with relevant data) on the issue of Kirchhoff's alleged namecalling. In view of all the statements yielded by the inquiry, the largely hearsay assertions of the complainants regarding the namecalling are not sufficient to show that probable cause necessary to subject the respondent to a hearing on this serious issue.

While we have declined to set this matter for hearing, our dismissal order reviews the major allegations. Moreover, one or two of the complainants' contentions are substantially sustained and the practice complained of disapproved. A continuation of such practice following this order is sufficient grounds for a request by the complainants to reopen this matter for additional action.

Statement of Facts and Discussion

I

Class Notes

The inquiry established that in connection with the world history final examination some, but not all, students were allowed to use their class notes. Mr. and Mrs. Clarence Bergmann noted their child was an exception to the policy which they claim was unfair and discriminatory. Mr. Kirchhoff stated that at the inception of the course he encouraged note taking and advised the students they would be permitted to refer to the notes during the final. He said he clearly informed them, however, that this was a privilege which could be withheld. Among others, classroom disciplinary problems were cited as a reason for denying the privilege. He described how the Bergmann child (Cary) had been very inferior regarding work assignments and had had numerous classroom disciplinary problems.

While the commission's current criteria does not specifically deal with this testing practice, it is not professionally permissible. For the sake of argument, suppose an instructor promulgated a policy that the conduct (whatever it was) of Cary Bergmann would be the basis for excluding a student from taking the final exam? Such would, of course, be the ultimate academic penalty - automatic failure! Indeed, such would amount to constructive expulsion from that course without any of the due process protections afforded students actually expelled under recent U.S. Supreme Court rulings. Obviously, a policy to exclude a student from a final exam because of past transgressions lies, if at

all, in the domain of the school board and not with a teacher. It is not the professional business of a teacher to deny or grant a crucial academic process on the basis of subjective observations as to who was bad and who was good.

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By analogy the "use of notes" process may be only less crucial in degree. The principles involved in absolute exclusion are applicable to the use of notes. In a given case, the notes may be essential to passing the exam and their prohibition the same as instant failure. Contrary to the respondent's assertion, this practice is clearly punitive in nature, a way of dealing with past "bad" behavior. Such behavior is to be dealt with in a current context. Manipulation of the academic testing process to deal with student disciplinary problems is conceptually erroneous as an educational goal and professionally impermissible as a ruling of this Commission. As a condition of this dismissal order it is expected that the respondent will refrain from this and similar practices in connection with his testing procedure.

II

Alleged Derogatory Names

Several of the complaining parties allege that during 1976-1977 and perhaps earlier their children were subjected to derogatory and humiliating name calling. Following is a list of names set forth in the complaint: "Rutabagas", "Retread", "Hicks or Frederika hicks", "Retards or Retarded" and "Nothing between the ears". With one exception, neither the complaint nor the inquiry makes it clear whether such names allegedly were used in reference to an individual, a group or the entire class. The exception is the term "nothing between the ears", which is said to have had specific reference to a Bergmann child.

Mr. Kirchhoff flatly denies the use of these terms with the exception of "Rutabagas" and "Retread," though he contends their use was in innocent stimulation to provoke interest and were free of malice or prejudice. He noted that upon receiving criticism about these two terms they have not been used by him or his class since the 1975-1976 school term. When pressed during the inquiry by a commission official, Kirchhoff conceded that he was not absolutely sure "that I didn't use the term 'retread' in the 1976-1977 year" - the school year mainly in issue. Further comments will presently be made regarding the use of these two terms.

As to the other and more offensive terms, respondent denies any involvement. Moreover, it is as to these allegations that we find a lack of probable cause for a formal trial type hearing. In reaching this conclusion we set aside the obvious hearsay nature of the complainants' assertions and the self interest of Mr. Kirchhoff. Some six students who regularly attended the class(es) in issue during 1976-1977 and 1975-1976 were interviewed. These students were chosen as nearly as possible on the basis of neutrality and the lack of any interest or knowledge of this proceeding. In all cases the interrogations failed to establish any significant corroboration for the complainants' assertions as to namecalling. We offer no further comment on the allegations as to these more offensive terms.

It appears that the use of "rutabagas" was innocuous and is no longer in use after complaint by a school official. The use of the word "retread" presents another problem, however, as it may have been used during the time period covered by the complaint. The complaining parties contend the term was used with specific reference to some of their children who had failed Kirchhoff's World History course. Mr. Kirchhoff said the word was only used generally in the sense that if a student didn't work hard he could fail [thus becoming a retread].

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In this situation it is not necessary to resolve the conflict as to how "retread" was used. It is professionally impermissible in either case. In any context a "retread" is perceived as of a second quality or inferior in kind. It seems likely that one or more of complainants' failed children (and others) were present when the term was concededly used. It is not unreasonable to assume that they construed the comment in a negative fashion. But even if they weren't present, the danger remains that hearing classmates will take up the term and subsequently use it in some fashion (perhaps openly or merely as an attitude) against them. This practice by an educator infringes professionally imposed commission criteria - see Rules 640-3.3(1), e and d (Iowa Adm. Code, Vol. 2). We are told that the term is not in recent use. Nevertheless, we take the opportunity to remind the respondent and the profession that the use of language which can convey a negative image to students is professionally improper.

III

World History Failures

Finally, the complainants fault Mr. Kirchhoff because some of their children failed world history one or more times in the 1976-1977 year or earlier. We have concluded from the allegations of the complaint and from the inquiry that this issue (if there is a problem) is more appropriately within the jurisdiction of the Tripoli school board. The methods, the procedures and the ultimate academic outcome of a course is a matter of local concern for the educator and the school district. As to this process the commission has no jurisdiction, save where in the process a certificated educator has acted unprofessionally in violation of our criteria found in Chapter 3 of our rules (Iowa Adm. Code-Vol. 2). The complainants make no such written or oral showing.

Apart from some apparent "window dressing" (e.g., "Kirchhoff denied necessary guidance" or "wouldn't help a floundering child"), the complaint is basically one that the respondent was unfair; that he was too difficult; and that his overall approach to the subject matter and testing process necessarily worked a discrimination as to the complainants' children who failed. The fallacy in the argument is seemingly twofold: In the first place, with the exception of student Tom Bergmann (an average to good student gradewise), the involved students were academically borderline in several if not all of the other courses. For example, the West child and Cary Bergmann had a large number of D grades and both had failing grades in other courses. The

school records show general attendance problems and disciplinary involvement more than once in Kirchhoff and other courses. ✎

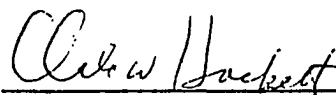
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More telling, however, is the fact that in 1976-1977 some seventeen out of seventy two students failed World History, including the son of a school board member. This fact removes the prop from complainants' argument that their children's failures resulted from unfair and discriminanatory treatment.

Among the school administration, Mr. Kirchhoff has a professional reputation as an educator who sets hard standards for his courses and expects them to be embraced by all students if they want to be academically successful. They say once committed to a course of action he has a tendency to remain unbending. On the other hand, he is also said to stand ready to aid students in trouble with extra projects and other matters to help a grade. The qualities we have described are not to be criticized. On the other hand, we are not insensitive to the complainants' pain and concern for the academic well-being of their children. The issue, however, if there is one, is for the governing board of the district. We understand that the issue, in some form, was considered by the board and relief granted to the extent that some option to World History was provided. Apparently, that relief is not seen as adequate by the complainants. Predicated on this record, however, the matter is still beyond our jurisdiction.

Decision

Subject to the qualification imposed in Division I above and to our censure as to the use of the word "retread" and like negative terms, this proceeding is dismissed.



Dale W. Hackett, Chairman

Nov. 22 1977

APPENDIX G. IPTPC HEARING RECORD 79-1

IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION

Ann Crowley, Teacher, Urbandale Schools, and Parent of Michael Patrick, II, Complainant	)	CASE No. 79-1
vs.)	
Dennis Yoshimura, Respondent	)	Decision

STATEMENT OF CASE AND JURISDICTION

This proceeding, alleging the use of nonprivileged and excessive physical force against a fourteen-year-old boy, was filed on December 20, 1978. By cover letter of January 11, 1979, the respondent was served with a copy of the complaint and requested to respond thereto. Subsequently, James Sayre, a Des Moines attorney, was retained for the defense and agreed that the case be set for hearing without exhausting further procedural requirements. On January 26, 1979, it was decided to assign the matter for hearing on March 16, 1979; hearing notification to that effect was served on all parties; and the matter came on for evidential review on that date. The full commission presided with the exception of commissioners Hoobler and Williams.

The incident at issue arose on October 5, 1978, within the "jurisdictional" boundaries of the Johnston School District and at which the respondent is a certified teacher. Mrs. Crowley is likewise a certified instructor in Urbandale, Iowa, and parent and next friend of the child involved. (See Iowa Adm. Code, Professional Teaching, 640-2.4, a and d). Accordingly, we have jurisdiction of both the persons and the subject matter. (Chapter 272A, 1977 Code and Iowa Adm. Code, Professional Teaching, 640-3.1 and 640-4.1). Hereafter references to the Adm. Code - our rules - will be cited as "640-" followed by the rule).

Ex Parte Communication Statute

While our contested case hearing decisions directly affect only the parties, the rules of professional and ethical conduct laid down in such decisions are generally applicable to the "teaching profession" as defined in Section 272A.2 of the Code. In this regard, current commission criteria (640-3.1) require compliance with relevant state statutes, including Section 17A.19 of the Code proscribing certain ex parte contacts with a state agency concerning a case pending decision. See also commission rule 640-2.13.

Evidential proceedings herein were concluded on March 16, 1979. The process of finalizing the formal agency disposition concluded on the date of this opinion. During the week following the hearing the commission received numerous oral and written communiques from certified educators and others, the prime purpose of which was to educate the agency as to the "proper disposition" of this matter. For the record, we note that such communications are professionally improper under our criteria (640-2.13) and legally impermissible under Section 17A.19 of the Code. Nothing we have said involves the parties herein.

Statement of Facts

Except as specifically noted, the facts are essentially without dispute. Accordingly, in evaluating the evidence the issue of witness creditability or veracity is of minimal significance. During the late afternoon on October 5, 1978, a football game was in progress on grounds belonging to the Johnston Community School District, Johnston, Iowa. The significant transactions resulting in the complaint occurred away from the playing field in an area containing a parking lot, a concession stand and a band room. Michael "Mike" Patrick, the complainant's son and a fourteen-year-old ninth grader in the Urbandale Schools, arrived at this site on his moped and joined two Johnston school students, Cosmo and Mike Graham with whom Patrick intended to stay over that night. Dennis Yoshimura, the respondent and certified teacher in the Johnston school system, was standing next to the music building with an unobstructed view of the area; he was not under extra duty assignment respecting the activity; and he was dressed casually. Mr. Yoshimura knew the Graham brothers as Johnston students but at this time neither the respondent nor young Patrick knew each other or anything as to their background. Predicated on our observation, this instructor is relatively young and perhaps appears younger than he is.

Shortly subsequent to his arrival, Mike Patrick on his moped and Brad Moyer on a bike began to chase nine-year-old Tom Lord who was on foot and sought to evade the older boys by darting in and around the cars on the lot.¹ The record is essentially silent as to the purpose or why Lord was chased, with Patrick saying he participated because he was asked by Moyer. Tom Lord testified that while he was frightened or "a little frightened" the older boys did not catch him and after two or three minutes the chase terminated in the immediate area of Yoshimura. While the hearing evidence is without clear support, the respondent's answer asserts that "Cosmo" did in fact catch Lord by the sleeve and that at the end of the chase Patrick almost made moped contact with Lord and Yoshimura. Apart from the emotional impact of the chase, there is no evidence of personal injury

¹As the result of the respondent's answer filed the day of hearing, there is some confusion as to the identity of the second boy involved in the chase. Despite Yoshimura's statement pointing to Cosmo, the hearing evidence implicates Brad Moyer. At any rate, due to the conceded participation of Patrick in the chase the identity of his companion is not relevant.

or property damage. The estimates in the record as to its length indicate the skylark lasted three to four minutes. There is no evidence that anyone, including the respondent who witnessed the episode, put forth efforts to stop the prank.

With Patrick still on the moped, the respondent in an exercised voice demanded "what do you think you are doing - what's your name?" Following unsuccessful efforts to learn Patrick's true name, school, and to obtain a driver's permit, and in the face of what the respondent saw as a bad attitude, Yoshimura said something like "let's go inside the [music] building." Patrick responded, "I don't have to go and you can't make me," whereupon the teacher secured a firm grip on the lad's hair at the lower back portion and applied strong downward pressure. Mike's immediate verbal demand was "get your fucking hands off me," which demand he says was rewarded by a blow to the chin administered by the instructor's free hand. The record admits of some dispute on this point. Both Cosmo and Mike Graham testified they saw the respondent strike such a blow with the palm of one hand. During his direct examination Yoshimura said he did not remember any such chin contact but on cross he said he was very upset when Patrick swore, did remember hand-chin contact, and because of the swearing it was not likely that he gently eased his palm to the boy's face. At this point, Yoshimura confiscated the keys to the moped and used his unrelinquished hair grip to remove Patrick from the bike and to take or go with him into the music hall.² At this time Mike Patrick had not been informed and did not know of Yoshimura's nexus to the Johnston school district and the instructor knew nothing as to Patrick's school status. With respect to the time period before entering the band room there is testimony that both the respondent and Patrick were exercised, showed agitation and were mad.

Once in the band room, though not yet in the music instructor's office, the respondent renewed efforts to learn the identity and status of Patrick. Faced with the same recalcitrance and the perceived continuing bad attitude, Yoshimura resolved to take the boy to his office, seemingly for the purpose of getting more information. The teacher testified that he wanted Patrick secured while he unlocked his door so he took hold of both arms and forced him toward the door. The youth resisted this constraint, whereupon Yoshimura obtained a firm grip on the boy's arms, swung him around through a 90 degree turn, and either threw or pushed him up against a brick wall, a protrusion of which caught and lacerated an area on the back of Patrick's head. The respondent testified more than once that he did not accidentally put the lad against the wall but that he intended to execute a single continuous motion that would terminate with Patrick against the wall.

²The manner of the short trip into the band room provides the remaining factual dispute of any significance. Young Patrick says he was forced there by the hair and the respondent claims physical force was unnecessary. The remaining witnesses noting the issue merely observe the respondent "took him into the building."

Mrs. Crowley testified that during her conversation that evening the respondent said "I lost my cool." During the course of his direct examination, Yoshimura spoke of being upset with Patrick rather than angry but on cross he admitted to attorney Seckington that he was emotional, angry and mad at Mike. Respondent's exhibit "1" reflects a reprimand by the Johnston School District superintendent as the result of this episode, wherein Louis Friested concluded that a loss of temper by Yoshimura was involved. Superintendent Friested testified at the hearing that he was aware of three other complaints at the school level alleging mishandling of students by the respondent, one of which resulted in formal written action.

The scalp laceration, which bled freely, was sutured at a local hospital. Mrs. Crowley, who was present, testified that the medical examination revealed a tender and inflamed area at the base of the skull in close proximity to the trauma caused by the hair pulling. Mike Patrick, with support from his mother, testified that that night he was dizzy, nauseous and had a headache; he went to school the next day but had to go home; and that these symptoms persisted another two or three days.

Findings of Fact

1. On October 5, 1978, the respondent observed Mike Patrick on a moped and Brad Moyer on a bike chasing Tom Lord on foot in and around a Johnston School District parking lot. The skylark motive is unknown; Lord was unapprehended and suffered no physical harm; and the episode terminated without overt interference by the respondent.

2. Patrick's moped came to a halt close to the respondent who said "what do you think your doing," followed by an inquiry as to the boy's name. Patrick refused to cooperate, displayed a negative attitude and the teacher seized the boy's hair at the back of the head in a strong grip and pulled. Patrick angrily demanded "get your fucking hands off" and the teacher responded in anger striking the chin with his palm. The respondent confiscated the moped keys, pulled Patrick off by the hair and took him into the nearby music building.

3. In the area of the respondent's office unsuccessful efforts were made again toward identifying Patrick, after which the respondent secured the lad by the arms and begin to force him toward the office door. Patrick began an effort to unlodge the grip and the teacher seized the boy's arms firmly, swung him around in a continuous motion, and threw him up against a brick wall.

4. At all times mentioned in the above three paragraphs, the respondent did not know Patrick, did not know him to be a Johnston student and did not know his school status, if any. Likewise, Patrick was unaware of the respondent's professional status until after the brick wall incident.

5. At the time the respondent seized Patrick's hair, struck him in the chin and subsequently restrained him by force and precipitated him into the brick wall, he was visibly exercised, upset and angry and the force exercised in these acts resulted from and was caused by this emotional state.

6. Mike Patrick, during all times material, made no effort to strike or assault the respondent nor did he engage in any other actions that could reasonably have caused the teacher to be apprehensive of bodily safety.

7. When Patrick struck the wall the lower inferior portion of his scalp was lacerated and required surgical closure. For an appreciable period of time the boy suffered a headache, dizziness and nausea as the result of which he missed two or three days of school. Medical examination that night also disclosed an inflamed, contused and sore area at the point where Patrick's hair was subjected to trauma. There was a moderate outlay of monies and medical expenses.

Discussion of Law

Preface

This is the first case of any significance involving the use of force by an educator against a student to be decided by the commission. The issue presented by the proceeding is currently controversial and an understanding of the law and principles of student punishment is important to the teaching profession, both as a professional proposition under our Section 272A.6 of the Code and from the standpoint of potential civil and criminal involvement. For these reasons and since the respondent's counsel argues that we should carefully articulate the criteria and guidelines by which his client is to be judged, we proceed to consider the law of corporal punishment, and related matters, somewhat exhaustively.

Any logical inquiry as to the present issue must originate with and from the fundamental constitutional precept of due process. Intrusions on personal security, bodily restraint and physical punishment by government,³ without due process, violates the "liberty interest" provisions of the Fifth Amendment, U.S. Constitution, as applicable to the states by the Fourteenth Amendment:

"While the contours of this historic liberty interest. . . have not been defined precisely, they always have been thought to encompass freedom from bodily restraint, and punishment. . . It is fundamental that a state cannot hold and punish an individual except in accordance with due process of law.

x x x

"There is, of course, a de minimis level of imposition with which the Constitution is not concerned. But at least where

³Actions by a public school district and by its officials and employees, on its behalf, are state or government acts within the Fifth and Fourteenth Amendments. See e.g., Ingraham vs. Wright, 430 U.S. 651, at 674 (1977).

school authorities acting under color of state law,⁴ deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, we hold that the Fourteenth Amendment liberty interests are implicated." Ingraham vs. Wright, 430 U.S. 651, 672-674 (Powell, J., Opinion of the Court-1977).⁵

The constitutional proscription of governmental intrusion on personal security and bodily integrity, has been extended by legislation in every state to prohibit some such intrusions by any person, not just government. Section 801 of the Iowa Criminal Code, defining the offense of assault and battery, is typical:

"801. Assault

"A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act."

It is, however, implicit from the Constitution and state legislation that one's liberty interest can be invaded by government according "due process of law," and bodily restraint, physical force and punishment can be imposed as an incident of a legal privilege or because of justification at law. These exceptions, conflicting with the historic and fundamental interest in personal integrity, must strictly adhere to the limitations imposed upon the privilege. Cf. Rochin vs. California, 342 U.S. 165 (1952); Ingraham vs. Wright, Supra, pp. 672-677. The nature of the privilege can be illustrated by the police officer using necessary force to make a lawful arrest; by the citizen using reasonable and necessary force to protect himself and others from an unlawful invasion; and by the public educator inflicting disciplinary corporal punishment on a student.

⁴As noted below, the limited privilege of a school administrator or teacher to impose bodily restraint and punishment derives from the state and is applicable only in the performance of quasi-governmental functions. Acts by an educator beyond that authority are not cloaked by this privilege.

⁵The Fifth and Fourteenth Amendments of the Constitution, when read together, provide in part:

"[Neither the United States] nor shall any state deprive any person of life, liberty or property, without due process of law." (emphasis added).

I

Corporal Punishment-Common Law

At the inception and without first defining the privilege to corporally punish, it is helpful to note that some decisions deal with an issue of student restraint or forcible invasion in terms of corporal punishment even though that privilege was clearly inapplicable on the facts. For example, where an educator forcibly separated fighting students the use of force was authorized and privileged to protect persons and property. Also, where a coach is shoved in basketball practice, the immediate and spontaneous assault upon the student is not an issue truly governed by principles of corporal punishment. See McLauhlin vs. Machias Schools, 385 At. 2d 53 (Supreme Judicial Court, Maine, 1978). Finally, it also appears that the factual issues of this case do not generate a conventional corporal punishment problem. The legal principles underpinning that doctrine are, however, useful to our disposition.

At common law⁶ an educator could impose reasonable but not excessive force to discipline a child. See, 1 F, Harper and James, Law of Torts, Sec. 320, pp. 288-292 (1956); W. Prosser, Law of Torts, pp. 136-137 (4 ed., 1971). A noted authority of some antiquity held, as "absolute rights of individuals", the right to "security of corporal insults of menaces, assaults, beating, and wounding." 1 W. Blackstone, Commentaries. But he did not regard it a "corporal insult" for a teacher to inflict "moderate correction" and Blackstone viewed the use of necessary force as "justifiable or lawful." Id at 453; and 3 Blackstone at 120. From colonial times this practice has played a role in public education of school children in most parts of the country. The doctrine has remained essentially unchanged:

"The prevalent rule in this country today privileges such force as a teacher or administrator reasonably believes to be necessary for [the child's] proper control, training or education. Restatement (Second) of Torts, Sec. 147 (2) (1965) . . .

"To the extent that the force is excessive or unreasonable, the educator in virtually all states is subject to possible civil and criminal liability." Ingraham vs. Wright, 430 U.S. 651, 661 (1977).

Although early cases viewed the authority of the educator as deriving from the parents, the concept of parental delegation has been replaced by the view that the state itself may impose such corporal punishment as is reasonably necessary "for the proper education of the child and for the maintenance of group discipline." 1 F. Harper and F. James, Law of Torts, Sec. 320, p. 292 (1956); Ingraham vs. Wright, supra, at 662. Moderate

⁶In a rather loose sense, the term means the nonstatutory rules of law, largely of judicial or case origin, which evolved long ago in England and were adopted and followed by new common law countries such as the United States and Canada. The idea of a "common law" to resolve nonstatutory legal issues is a continuing part of our jurisprudence.

physical discipline is authorized by legislation in 21 states,⁷ while two states by statute prohibit corporal punishment in the schools - Mass. Gen. Laws Ann., C71, Sec. 37 G (1976 Supp.) and New J. Stat. Ann., Sec. 18A: 6-1 (1968). In virtually all of the other jurisdictions, including Iowa, the common law privilege and doctrine has been preserved by the judiciary. Tinkham vs. Kole, 253 Iowa 1303, 110 N.W. 2d 258 (Ia. Sup. Ct. 1961); See also Christman vs. Hickman, 225 Mo. App. 828, 37 S.W. 2d 672 (1932); Suits vs. Glover, 260 Ala. 449, 71 So. 2d 49 (1954).

II

Corporal Punishment - Supreme Court

On April 19, 1977, the United States Supreme Court extensively considered the constitutional implications of corporal punishment in the schools. Ingraham vs. Wright, 430 U.S. 651, is factually unimportant here, except to note that the punishment imposed was characterized as "harsh" and "severe" by both the majority and the dissenting justices. The majority opinion, which left intact the prevailing doctrine of corporal punishment, decides two important constitutional issues. First, the court holds that the constitutional proscription against "cruel and unusual punishment" (Eighth Amendment) is inapplicable to disciplinary punishment by teachers and administrators:

"Today the Court holds that corporal punishment in the schools, no matter how severe, can never be the subject of the protections afforded by the Eighth Amendment." 430 U. S. at 863 (White J. dissenting).

Secondly, the court ruled that while the student had a Fourteenth Amendment due process liberty interest against bodily interference, procedural due process does not require a hearing or other minimal procedural safeguards prior to inflicting disciplinary punishment:

"[T]he Fourteenth Amendment's requirement of procedural due process is satisfied by Florida's preservation of common-law constraints and remedies [to redress wrongful punishment]. 430 U.S. at 683.

"We conclude that the Due Process Clause does not require notice and a hearing prior to the imposition of corporal punishment" 430 U.S. at 682.

⁷Cal. Educ. Code Sec. 49000-49001 (West Supp. 1977); Del. Code Ann., Tit. 14, Sec. 32-835, 32-836 (1976); Haw. Rev. Stat. Sec. 298-16 (1975 Supp.), 703-309 (2) (Spec. Pamphlet 1975); Ill. Ann. Stat., c. 122, Sec. 24-24, 34-84a (1977 Supp.); Ind. Code Ann. Sec. 20-8.1-5-2 (1975); Md. Ann. Code, Art. 77 Sec. 98B (1975) (in specified counties); Mich. Comp. Laws Ann., Sec. 340.756 (1970); Mont. Rev. Codes Ann. Sec. 75-6109 (1971); Nev. Rev. Stat. Sec. 392.465 (1973); N.C. Gen. Stat. Sec. 115-146 (1975); Ohio Rev. Code Ann. Sec. 3319.41 (1972); Okla. Stat. Ann., Tit. 70, Sec. 6-114 (1972); Pa. Stat. Ann., Tit. 24, Sec. 13-1317 (Supp. 1976); S.C. Code Sec. 59-63-260 (1977); S.D. Compiled Laws Ann. Sec. 13-32-2 (1975); Vt. Stat. Ann. Tit. 16, Sec. 1161 (Supp. 1976); Va. Code Ann. Sec. 22-231.1 (1973); W. Va. Code, Sec. 18A-5-1 (1977); Wyo. Stat. Sec. 21.1-64 (1975 Supp.).

The Court's rationale as to the inapplicability of the Eighth Amendment and Procedural Due Process is predicated primarily on the theory of adequate state remedies for abuses of school discipline. (430 U.S. at 676-677):

"This is not to say the child's interest in procedural safeguards is insubstantial. The school disciplinary process is not a totally accurate, unerring process, never mistaken and never unfair. . . . In any deliberate infliction of corporal punishment on a child . . . there is some risk that the intrusion on the child's liberty will be unjustified and therefore unlawful.

X X X

"If the punishment inflicted is later found to be excessive . . . the school authorities inflicting it may later be held liable in damages and, if malice is shown, [in Florida] they may be subject to criminal penalties."

III

Legal Privilege to Punish - Iowa

As noted in the preface to this legal discussion, one's liberty interest to be free of forcible bodily interference is protected by express legislation in Iowa (Assault, Iowa Criminal Code). In this regard, there are no Iowa statutes expressly involving corporal punishment and the schools. Thus, in Iowa the privilege of teacher and administrator to restrain, punish and use force results from the common law doctrine⁸ as construed and made applicable by the Iowa Supreme Court.

A

Tinkham and Mizner: In Iowa the nature, extent and application of the doctrine of corporal punishment comes down from two decisions and the common law principles approved in those decisions. Tinkham vs. Kole, 110 N.W. 2d 258 (1961); State vs. Mizner, 50 Iowa 145 (1878). Generally, the cases stand for the proposition that: (1) Educators in Iowa have a legal privilege to use reasonable and moderate force to restrain, correct or punish a child having a student-school status as to such educator; (2) The purpose for which corporal punishment is authorized is limited (Tinkham at 261), extending to discipline necessary to the child's control, reformation, training and education (Mizner, at 149, and Restatement (Second) of Torts, Sec. 147(2), (1965)); and, (3) An educator

⁸Here, we are concerned only with the privilege to punish and use force within the strict meaning and purpose of the doctrine of "corporal punishment." As noted elsewhere, there may be a privilege, not necessarily related to teacher-administrator status, to use reasonable restraint and force to protect one's person, others and property.

who abuses the privilege by unreasonably using force, or uses it immoderately or resorts thereto not for its permissible purposes but out of a motive of malice, revenge, passion or anger, is subject to criminal sanctions for assault (Mizner, Supra), and money damages for the civil tort of assault and battery.⁹ Accord, Roberts vs. Way, 398 F.2d 857 (U.S. District Court, Vermont, 1975); Hogenson vs. Williams, 542 S.W. 2d 456 (Texas, Civil Appeals, 1976).

In Tinkham the student, immediately prior to class and while other students were disorderly, put on a pair of white band gloves belonging to the boy close-by. The defendant ordered him to take them off at once. There was some evidence that this was not done quickly and perhaps done with some insolence and with a "bad" attitude. At any rate, the evidence reflected that the teacher "was getting mad. . . and getting madder" and struck the boy back and forth across the face. Among others, the child sustained a permanent injury to the eardrum. In Mizner the student had failed to attend an algebra class upon a written excuse of her father tendered to the instructor prior to the session in issue. The next day a conversation ensued during which the student showed displeasure and perhaps insolence with the act of ignoring the prior excuse. The teacher struck the girl across her shoulders and back with the result that marks remained for some two months. In both of these cases, spanning a century of common law evolution as to school discipline, the Iowa Court clearly took a restrictive view of the privilege to punish; intimated the punishment in both was questionable (Tinkham at 262 and Mizner at 149); and ruled that the question of whether one was privileged is a fact question for the jury and not alone for the court. Thus, in all but the most extreme cases (e.g., an educator cuts off an ear) the issue of whether the force was privileged depends upon whether its use from the inception to the end was reasonable. Tinkham and Mizner read in combination contain most of the elements or standards necessary to the inquiry and evaluation of reasonableness, which factors are more comprehensively stated in the Restatement (Second) of Torts, Secs. 147, 150-151, 155 (1965):

- (1) One standing in loco parentis is privileged to use reasonable force as he reasonably believes necessary for the child's proper control, training or education;
- (2) In determining if the force is reasonable for those purposes the following factors are to be considered:
 - (a) The age, sex and condition of the child,
 - (b) The nature of his offense or conduct and his motives,
 - (c) The influence of his example upon other students,

⁹Under Iowa municipal Tort Claims legislation, a school district normally pays money judgements resulting from tortious conduct of its staff. Since the liability of the district is to respond for acts of employees within the scope of employment, query, if a criminal or civil assault is within the scope of employment and, if not, who pays any such judgement?

- (d) Whether the force was reasonably necessary to compel obedience to a proper command, and
- (e) Whether the force was disproportionate to the offense, is unnecessarily degrading, or is likely to cause serious injury.

- (3) Force applied for any purpose other than the proper training or education of the child or for the preservation of discipline, as judged by the above standards, is not privileged.

Though they are implicit in the Restatement's Test, there are two factors noted in Tinkham and Mizner which must be treated specifically. First, physical intrusions upon a student arising not out of a purpose to correct or discipline but rather resulting from malice, passion, rage or anger are not privileged and in fact are unlawful. With evidence of a "mad" teacher "getting madder" the Tinkham Court several times stressed the importance of motive for the punishment (110 N.W. 2d at 262):

"The teachers motive in administering discipline must be considered . . . Cooper v. McJunken, 4 Ind. 290, holds that if a punishment is administered 'in anger' . . . the perpetrator may be held for assault and battery." (And further at 261 quoting with approval from 47 Am. Jur., Schools, Sec. 175)

"That it must not be cruel or excessive and the teacher must not act wantonly or from malice or passion."

See also the following authorities supporting this proposition: 1. Cooper vs. McJunkin, 4 Ind. 290 (1853) (punishment inflicted in "anger or in insolence" can subject teacher to legal action). 2. Haycraft vs. Grigsby, 67 S.W. 965 (Mo. App., 1901) (Teacher may not punish maliciously, there being no such thing as reasonable punishment from a malicious motive). 3. Suits vs. Glover, 71 So. 2d 49 (Ala., 1954) (Teacher who punishes with malice or wicked motive is liable for assault). 4. And, see generally cases collected 43 ALR 2d, "Teacher-Punishment of Pupil," Sec. 11, p. 483.

The second factor involves the proposition that an educator has no privilege to inflict serious or permanent injury. Courts have little trouble in sustaining the educator's privilege in the usual case where punishment is inflicted upon that area most suited by nature - the student's bottom. The conclusion is otherwise where the force is indiscriminately aimed at other parts of the body and injury results. Tinkham, involving blows about the head and permanent ear drum damage, approves the following Restatement of Torts rule (110 N.W. 2d at 262):

"A teacher 'is not privileged to inflict upon a child a punishment . . . which is liable to cause serious or permanent harm.' . . . The privilege . . . is given for the benefit of the child and for the purpose of securing his proper education and training. A punishment that does serious or permanent harm . . . is obviously detrimental and not beneficial to his future".

And from a standpoint of criminal liability, this from Mizner (150 Iowa at 149): "Any punishment with a rod which leaves marks or welts . . . for two months afterwards, or much less time, is immoderate and excessive. . ." (emphasis added). This rule as to injury and inapplicability of the privilege is uniformly followed elsewhere. See e.g., Roberts vs. Way, 398 Fed. Supp. 856, 860 (U.S. District Court, Pa., 1975) (if punishment excessive, teacher guilty of assault); Glaser vs. Marietta, 351 Fed. Supp. 555 (U.S. District Court, Pa., 1972) (force affirmed as it "caused no physical or psychological damage"); Rupp vs. Zinter, 29 Pa. D. & C. 625 (1937) (student struck in head - court said if teacher felt corporal punishment warranted, "nature has provided a part of the anatomy for chastisement" and such should be there applied); Cooper vs. McJunkin, 4 Ind. 290 (1853) (a choleric schoolmaster is not privileged in beating and cutting the head and face of a wayward boy); see generally cases discussed in 43 A.L.R. 2d., "Teacher-Punishment of Pupil," Sec. 7, p. 478.

B

Privilege-Student-Teacher Relationship: May a Johnston Community School District educator take in hand a child visiting from Boston, Mass., and proceed to correct, reform, train and educate by applying ten blows to his bottom? If the answer is no, is there nevertheless authority to so punish a visiting student from the Des Moines Area Community College, from private Dowling of West Des Moines or a child from public Urbandale?

There is seemingly no direct authority considering whether the privilege to corporally punish is applicable to students alien to the teacher's jurisdiction. By analogy to the legal rationale on which the punishment privilege was founded - in loco parentis - a negative answer to the above questions is suggested. It is common knowledge requiring no citation of authorities that a parent's legal privilege to correct and punish does not extend to another's child. Moreover, there are a few cases which do suggest that the educator's privilege depends on a direct teacher-student relationship in the sense that there is at least a general school responsibility to correct, reform, train or educate the particular child involved. See for example, Peck vs. Smith, 41 Conn. 442 (1874); Kidder vs. Chellis, 59 N.H. 473 (1879); Pendergast vs. Masterson, 196 S.W. 246 (Tex. Civ. App., 1917); Suits vs. Glover, 70 So. 2d 49 (Ala., 1954). In most of these decisions the courts found authority to sustain the corporal punishment in issue but the value here is the fact that the courts saw it necessary to establish that a teacher-student relationship did in fact exist. Indeed Pendergast, supra, holds a superintendent liable for punishing a high school student in his district for the reason that he was not within the rule that a teacher may punish a student to compel compliance with school rules. Suits, supra, at least by implication, also stands for the proposition that it is necessary that the one who administer punishment be responsible for maintaining order and discipline. In view

of the fact that the privilege is conceptionally one of a teacher in relation to students assigned to the school entity over which he or she has jurisdiction, and because the Iowa Court construes the privilege narrowly (Tinkham, at 261), it would appear that the legal privilege to corporally punish does not extend to students from alien private and public school districts.¹⁰ It should be noted that this issue is directly applicable to the respondent here. Our disposition of this case, however, rests on other independent grounds and would be the same if Patrick were a Johnston student. Indeed, the respondent in his brief and argument states Patrick is to be treated as a Johnston student since he lied to the teacher that he was. This, of course, ignores respondent's own testimony that since Patrick came on a moped he knew he probably was not from Johnston and also that because of Patrick's attitude he didn't believe him when he gave his name and school.

C

Nonprivileged Punishment - Other consequences - Jop and Teaching Certificate: The use of nonprivileged corporal punishment and other unlawful force and violence upon a student is also grounds to establish unfitness to teach, to terminate employment and to revoke or suspend the right to practice teaching. See e.g., McLaughlin vs. Machias Sch. Comm., 385 A. 2d 53 (Me. 1978) (During basketball practice coach instantly reacted to shove by striking student in mouth - held, actions showed teacher unfit to teach - termination affirmed); Landi vs. West Chester Area Sch. Dist., 353 A. 2d 895 (Pa. Cmwlth., 1976) (studyhall teacher, believing student had misbehaved grabbed him and threw him into blackboard causing injury to his head - termination order affirmed); Caffas vs. Secretary of Education, 353 A. 2d 898 (Pa. Cmwlth., 1976) (same); Chapter 279, 1977 Iowa Code, as amended; Section 272A.6 of the Code.

Section 272A.6 directs this commission to establish criteria governing professional and ethical conduct within the teaching profession and the same statute authorizes action by us toward suspension or revocation of a teaching certificate for unprofessional or unethical violations of such criteria. Though we have not specifically promulgated rules as to the permissible nature, scope and procedures in punishing students, that

¹⁰We recognize that teachers and administrators are called upon to perform many duties which require involvement with students from other districts. Should the situation arise, such educators are legally privileged to use necessary and reasonable force to protect oneself, one's students, other persons in danger and school district property. Other instances of the reasonable use of force might be restraint of a student for a short time pending arrival of the police or other school authorities. If it is believed that a student alien to the district should be subjected to corporal punishment, the matter should be referred to the parents or other school authorities.

subject matter is within our jurisdiction and present criteria is expansive enough to cover the instant problem.

Rule 640-3.1 (Iowa Adm. Code, Professional Teaching) provides: "A violation of any of the school laws of Iowa constitutes a violation of [commission] criteria". The legal doctrine of privilege and student punishment as discussed under Division III, Section A above, is the common law of this state and a part of the "school laws of Iowa." Rule 640-3.3(1)(c) and (d) provide further:

"Shall make reasonable efforts to protect the students from conditions harmful to learning, or to health or safety.

"Shall conduct professional business in such a way so that he or she does not expose the student to unnecessary embarrassment or disparagement".

See also Rule 640-4.5(2)(b) (Adhere to and enforce lawful policies of school district); 640-4.5(1) 2 (supervise district students in accordance with law, school district policy and administrative regulations); 646-4.12 (4. shall provide leadership and direction for others by appropriate example and 8. shall exercise discretion and judgement in use of authority).

In considering a part of the above criteria, the respondent (brief and argument, p. 2) seems to say it is beyond our jurisdiction to consider whether conduct amounted to a statutory criminal assault or a common law civil tort of assault. In so far as we understand the argument, our hands would be tied to deal with many clearly established unprofessional acts proscribed by our rules. For example 640-3.2 proscribes "fraud" in procuring a certificate and we would have to determine the offense as a condition of action. Moreover, to act on a breach of a teaching contract it is necessary to construe the relevant statutes and to apply civil contract law to determine if a valid agreement has been breached. While it is true that we cannot adjudicate criminal or civil assault and battery in the sense or liability therefore, we have jurisdiction to consider the law of privilege in situations of student punishment and injury in order to resolve the ultimate issue of unprofessional or unethical conduct under Chapter 272A of the Code.

Discussion and Conclusions

A

As considered in detail above, if there is lacking a direct teacher-pupil relationship between the Johnston educator and visiting Urbandale chld, the legal privilege to forcibly restrain and punish moderately is not available. If the force is not legally privileged, its exercise is contrary to both statutory and common law proscriptions. Due to the lack of direct judicial precedents, we ignore the problem here and proceed on the basis of the necessary relationship.

B

The respondent's brief, thought not articulating it as such, suggests another legal justification for the forcible restraint, blow and injury - intervention to protect Tom Lord, the third grade lad being chased. Despite assertions in the brief to the contrary, there is nothing in the record showing that Yoshimura intervened or took any overt action until the chase terminated. Indeed, it is not ever clear that his subsequent action was provoked any more by the Lord incident than by the fact that he felt Mike Patrick drove the moped recklessly close to him. At any rate, at the moment the teacher approached the bike and seized hair no situation of impending risk or danger to persons or property existed nor did the legal privilege accorded for such facts.

C

The respondent seemingly argues that his forcible actions were warranted by Patrick's bad attitude at the inception of the encounter, by the reluctance to cooperate and by his use of an obscenity. There are two ways to view this problem, one emotionally and one legally. As a teacher or parent one might see such from a child as intolerable and in need of correction. Legally, if the teacher-student nexus was not there perhaps Patrick had no legal burden to cooperate in any fashion and Yoshimura no mandate to require such. The fourteen-year-old's "get your fucking hands off me" comment was in response to a total stranger laying not unviolent hands upon him and forcing his head back. Despite how we might feel emotionally about a lad of tender years using such language, there is at least a very good argument that Patrick may have had a legal justification to have responded with tools much more effective than swearing. Moreover, however bad one might view this language the law does not permit a response thereto of forcible retaliation and injury.

At any rate, as we have noted these factors of attitude, insolence and the like are to be considered in the test as to whether punishment was privilege, i.e., giving those circumstances was the punishment reasonably necessary and moderate and done with a motive to correct, reform, train or educate. See discussion of Tinkham and other authorities on this point under "Discussion of Law", Division III, A, above.

D

The respondent seemingly also contends that his actions were in accord with written Johnston District policies. He may also imply in argument that his superintendent and hearing witness is in agreement. Predicated on the record such agreement by the school's chief administrator is questionable. See e.g., respondent's exhibit "1", a copy of a reprimand by that official as the result of this incident and directed to respondent.

Such inquiry is, however, irrelevant. If the policies conform with applicable constitutional and other legal provisions and if Yoshimura conformed to the policies there is no problem. As noted above, the concept

of corporal punishment is based on adherence to several fundamental concepts of constitutional origin and other state law provisions. In this regard, no citation of authority is needed for the point that any school board policy in this area must strictly conform with the constitution and law or be void.

The real problem is that the Johnston document - "Policy on Student Behavior . . . and Corporal Punishment" - either does not cover this factual situation or Yoshimura was not in compliance. The relevant portions follow:

"Corporal Punishment

"Corporal Punishment of a pupil should not be employed as a first line of punishment for misbehavior.

"Restraint, which is considered the act of controlling the actions of a pupil when such actions may inflict harm to himself, herself, or others, is not considered corporal punishment. [emphasis added.] Teachers and administrators must feel free to use reasonable and appropriate means at the moment as may be necessary to prevent a pupil from harming himself or herself or others, or to prevent a breach of discipline.

"The following procedure is recommended in cases where corporal punishment may be necessary:

- "1. Corporal punishment must be administered by the classroom teacher or a principal.
- "2. Corporal punishment must be administered in the presence of a second person - another classroom teacher, principal or other adult.

The witness must be told what the punishment is for in the presence of the student.

- "3. A written record must be made of the offense, punishment meted out, names of all persons present and who administered the punishment. Brief written comments concerning the incident might also be included in the record.
- "4. The written record must be made by the person administering the punishment, signed by the witness, and via the principal placed in the student's file. The record can be made available to parties in interest if so requested.
- "5. Students must not be allowed to be spectators in the administration of corporal punishment to other students."

The respondent obviously did not follow the procedures in the numbered paragraphs. The only remaining provision, which has nothing to do with striking a chin or throwing one into a wall, is the authority to restrain a student for the limited purpose of preventing "harm to himself, herself or others." This policy may well pass constitutional and legal requirements. It is hard to say if it could even be applied to this factual context but it was not in this case and Yoshimura's reliance thereon is not well taken.

E

Respondent also suggests that since the problem was dealt with at the local level and resulted in a district reprimand, the commission should decline the exercise of jurisdiction. The contention lacks merit. We have stated our jurisdiction above. Section 272A.6 provides a jurisdiction distinct from anything that could happen locally (e.g., termination) or judicially (e.g., civil or criminal tort proceedings). We have ultimate responsibility under the statute to evaluate professional and ethical conduct in relation to the right to continue in the teaching profession. That responsibility, at least on the merits of a pending case, has little, if any, relevance to collateral local actions.

Moreover to adopt such a view would infringe upon complainant Crowley's rights (and the boy's) given by Chapter 17A of the Code and our rules. See Section 17A.10 and Rule 640-2.2. In essence, parties are not required to accept an informal disposition in lieu of an agency decision on the merits.

Decision

Until we invoke the rulemaking procedures of Section 272A.6 and Chapter 17A, we can not lay down broad criteria to govern the respondent and the teaching profession as to what is and what is not professionally permissible in using physical force on a student. We can exercise our jurisdiction in a quasi-judicial fashion to suggest appropriate professional responses under current 272A criteria to the problem in this case.

(1) First, the respondent, because of the moped, had an idea that Patrick was not a Johnston pupil. Accordingly, it would have been reasonable to take action to evict the unruly boy from Johnston property where he enjoyed only guest status. If a request to this effect failed, the possession of the keys and removal of the moped might have worked. As a last resort, the respondent could have taken the child's arm and escorted him away, being careful to use only reasonable and moderate force and to not injure him. In this situation, the respondent or a comparably positioned educator should exercise great reservation in using force, not as a commission proposition of professional conduct but because the Iowa law is not clear as to the educator's legal privilege respecting an alien student.

(2) If it was felt that the offense warranted parental discipline or school corporal punishment, the possession of the keys and moped supplied the leverage or at least a tool to ascertain the boy's identity and school status. If Patrick would not respond, some of his Johnston school friends

were known to the respondent. It is most questionable that Johnston school authorities, respondent's principal for example, would have an on spot privilege to punish for correction, training or education but reasonable efforts would have provided the issue for the Urbandale school or parents.

(3) Finally, if an unknown child is acting out on school or other property, an educator may use reasonable force, unrelated to the concept of punishment, to subdue, protect himself, the child or others. But if the child is not acting out or any such behavior has terminated, and the educator wants to restrain him for identity and corrective action, such restraint is not corporal punishment per se and the educator is not privileged to exercise painful, harmful and injurious force upon the student. Moreover, as a professional proposition, as under law, an educator is not privileged to restrain and physically invade the person of a student as the result of passion and anger. Likewise there is no privilege to inflict a serious or permanent injury of any kind.

Applying the above legal principles to the instant case, it is apparent that a conventional issue of privilege to corporally punish is not involved. Physical force was not used with a purpose of correction, reformation or the like. But assuming that the usual test of privilege is relevant, the respondent's actions exceeded permissible limits, legally and professionally.

At the time of initial bodily contact, Mike Patrick presented no reasonably perceived risk of harm to Yoshimura, himself or others and he was not forcibly resisting the respondent. Seizing the lad's hair in a firm and painful manner (characterized in a decision as humiliating and an affront to dignity), was unreasonable and immoderate because of the form of the act and because it was unnecessary. If Yoshimura reasonably felt it necessary to remove Patrick from the bike, he should have secured him by the arm and eased him off. Under the facts here, there are no circumstances providing a legal justification for striking the lad in the chin. Such an act is nonprivileged and unreasonable per se. Finally, forming the intent to and deliberately propelling Patrick into a brick wall with sufficient force and violence to injure him is clearly nonprivileged. Yoshimura argues that he did not intend the injury - it was accidental. This argument was also pressed and rejected in some of the above cases. If the force employed was itself intentional, as the respondent affirms, he assumes the risk of injury.

What we have said goes only to the form of the force, its nature and the kind of bodily contact. Two other elements here involved are fatal to the teacher's defense of legal privilege. First, Yoshimura testified, and we have found, that the enumerated acts were done in anger and out of passion because he was "upset." Predicated on the above authorities and as a professional proposition of this commission, one is never privileged or justified in punishing a student out of malice, passion or anger. Secondly, the privilege to punish evaporates at the point where an educator inflicts serious or permanent harm. Respondent's efforts to characterize Patrick's injury as minimal won't wash. His head was cut open necessitating surgical closure and he was bothered for days with pain and neurological-like symptoms often viewed medically with alarm.

A final comment on the use of force. Yoshimura opened his testimony at the hearing by stressing that the whole episode progressed as it did because of Patrick's attitude. In this regard, his brief forcefully argues that he was justified in his actions because of the boy's bad attitude, insolence and swearing. Since this logic permits bodily injury because of insult, may a teacher, when insulted, fracture an arm, break out teeth or rip or cut off an ear? If not, wherein lies the distinction? Or, to look at the issue from a viewpoint of great interest to the teaching profession, consider this: Suppose the situation were reversed, which is not unprecedented, and because of the teacher's attitude, insolence and swearing, the student pulled hair, struck the chin and intentionally propelled the teacher into a brick wall? Would respondent's theory as to attitude and physical response keep the student harmless from the subsequent governmental proceedings to expel him for assault? We are aware that popular sentiment exists among the public and within the teaching profession viewing with alarm student attitudes and behavior and advocating a free hand to inflict severe and harsh treatment. But, whatever the atmosphere, it is not lawful or professional to respond to attitudes and insolence with violent force and injury. It is not legally permissible among adults and others and school status does not change the rule. Insofar as educators are concerned, a student may only be punished within an appropriate context and only in a reasonable and moderate fashion and without serious or lasting injury and only for the purpose underlying the corporal punishment rule.

For these reasons, we conclude that Dennis Yoshimura failed to comply with the law privileging force against a student and violated the professional criteria adopted under Section 272A.6 as cited above. At the hearing, attorney Seckington advised the commission that his client did not seek certificate suspension or revocation. While that question is ultimately for us, we have considered Mrs. Crowley's concession and the following two factors in our disposition: 1. While the respondent oscillated on the point later, when first asked he clearly and without reservation said he was morally correct and would handle a comparable problem the same way. 2. The Johnston superintendent of schools testified, without objection, that there had been at least three other complaints of student manhandling involving the respondent, one of which was formally disposed of in writing. While we have not considered these on the issues of propensity or credibility, they are noted in connection with the disposition following.

Order

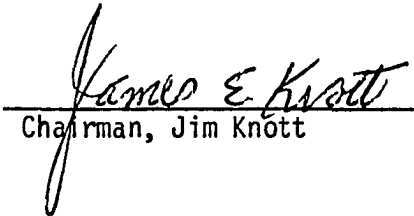
It is ordered that case no. 79-1 remain pending and that the agency retain jurisdiction thereof at least through June 1980.

It is further ordered that the commission's director, on three occasions during the 1979-1980 school year, consult with the respondent and his superintendent and principal to ascertain if the spirit, legal principles and professional criteria of this decision are being honored.

It is also ordered that if the respondent cooperates in this order and no further problems of a like nature develop the case will be dismissed by the commission at its regular meeting after June 30, 1980.

It is finally ordered that a copy of the attached formal reprimand be lodged with the respondent's teaching certification file, the Department of Public Instruction, until June 30, 1980.

April 12, 1979



Chairman, Jim Knott

Iowa Professional Teaching
Practices Commission

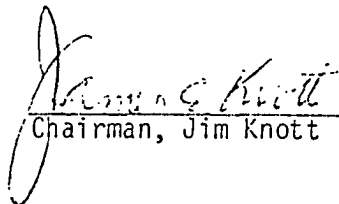
Ann Crowley, Complainant	}	Case 79-1
vs	}	
Dennis Yoshimura, Respondent	}	Reprimand

To: Dennis Yoshimura:

As noted in detail in the attached decision of case 79-1, the force, violence and injury which you inflicted upon Mike Patrick on the afternoon of October 5, 1978, was nonprivileged, contrary to law and unprofessional under Section 272A.6 of the Iowa Code and our criteria. The commission has decided to presently forego more serious action on the condition that future use of force and punishment in the school context will strictly conform to the rules and principles noted in the decision. You should especially note that under no situation involving student discipline are you privileged to strike out in malice or anger or to inflict serious and permanent injury.

Accordingly, under Section 272A.6 of the Code you are hereby reprimanded for these actions and warned against their repetition.

April 17, 1979


Chairman, Jim Knott

APPENDIX H. IPTPC HEARING RECORD 79-5

IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION

Robert Kempe, Parent	)	Case No. 79-5
of Roberta Kempe,)	
Complainant)	
)	
vs)	
)	
William Raisch and	)	Hearing Decision
Jack Rockwell, School)	
Administrators, Van)	
Meter Community Schools,)	
Respondents)	

Statement of Case and Jurisdiction

The instant proceeding, alleging the denial of substantive and procedural due process in connection with a student discipline case, was filed on April 19, 1979. As requested by the commission, informal responsive materials were furnished by the respondents jointly during the first week of May (see commission's hearing exhibits "A" and "B"). Subsequent to inquiry and oral presentation by staff on the issue of probable cause for hearing (4-27-79), a unanimous commission set June 8, 1979, for evidential proceedings on the following issues (May hearing notice):

- a) The major question is whether the suspension procedures permitted the students effective hearing recourse to assure that expulsions were based only on creditable evidence of some substance.
- b) Assuming the failure to accord such hearing process, the minor question is whether the students' suspension was predicated on creditable evidence of some substance.

Evidential proceedings, including testimony by all parties, concluded on June 8, 1979; an agency decision adverse to respondents was issued in mid July; and a subsequent application for rehearing was either expressly overruled or denied by operation of law. A Chapter 17A petition for judicial review was filed by respondents on September 26, 1979 (Polk County Equity CE 11-6399). Subsequent to hearing therein and because of a record problem, Judge Lavarato ruled on February 21, 1980, that the court lacked a sufficient basis from which to review respondents' contentions. The commission's decision was set aside and the matter remanded to the agency to conduct further evidential proceedings. Subsequent activity by respondents in CE 11-6399 is noted presently under "Motion to Dismiss."

A second hearing notice, incorporating the two issues set forth above, was served on or about June 9, 1980, specifying July 28, 1980, as the new hearing date. Tom McMillen, Jr., Des Moines, Iowa, and John Reich, Adel, Iowa, complainant's attorneys, appeared for Kempe. Jeff Krausman, Des Moines attorney represented respondents.

The commission's jurisdiction extends to all members of the teaching profession as defined in Section 272A.2 of the Code, which includes respondents. Its hearing authority covers alleged violations of agency criteria of professional and ethical practices, including the alleged denial of student constitutional and legal rights (see Section 272A.6 and Iowa Administrative Code, Professional Teaching, Chapters Three and Four). Standing to raise such issues is conferred upon a parent of an involved K through 12 student (Iowa Adm. Code, supra, Rule 640-2.4(1)d). Accordingly, the commission has jurisdiction of all parties and of the subject matter.

Note on Decision

The decision following our action on respondents' motion to dismiss is that of chairman Burgess, Knott J., Glass B., Lemke K., Hackett D., and Hoobler J. Barbara Smeltzer and Richard Paulson were absent. Marilyn Williams dissents and her minority opinion is attached.

Motions and objectives not specifically disposed of at the hearing or herein are overruled.

Motion To Dismiss

Prior to hearing, respondents filed a motion to dismiss attacking agency subject matter jurisdiction on two grounds:

1. As a condition precedent to agency consideration of sanctions, the Professional Teaching Practices Act (Ch. 272A, 1979 Code), requires that the commission have established professional criteria applicable to the alleged acts or practices at issue. Respondents seemingly argue that there are no specific criteria touching upon student suspension and no general agency criteria otherwise applicable.

2. The second division of the motion essentially restates the no criteria proposition; assumes for sake of argument that if any there be they are unenforcibly vague; and relies on a constitutional due process notice principle as support therefore. The notice concept is articulated thusly: Before government can impose sanctions, it must by statute or rule define that conduct giving rise to a penalty (due process notice requirement), and it must do so in language that is clear. If the statute or rule is not susceptible of clear understanding it is constitutionally void for vagueness.

In overruling the entire motion for the following reasons, we note two things: First, we agree with respondents that prior to imposition of sanctions, Chapter 272A does require relevant professional criteria existent at the time of the proscribed practice. Secondly, though research has found no case so holding, we assume for argument's sake that the due process notice concept and the void for vagueness doctrine are applicable to Section 272A.6 proceedings to the extent that teaching certificate loss is involved.

1. Respondents' contentions are precluded by Judge Lavarato's ruling of March 21, 1980. Res judicata or something comparable. Our resistance there to the same contentions specifically urged the existence of clear criteria to support the July 1979 sanction and Judge Lavarato ruled, on the merits, in our favor.

2. Rule 640-3.1(1)a, Iowa Adm. Code, Professional Teaching, dealing with violations of school laws, especially in light of the Goss constitutional mandate, provides specific and clear rule authority to support any potential sanction that might be imposed. Several further criteria governing educator-student relations, including discipline, are cited below as relevant to this problem.

3. Since a majority of the commission decided to refrain from action involving respondents' teaching certificates, the constitutional doctrine of "notice" and "vagueness" does not apply. Lesser professional actions by the commission does not fall within the zone of constitutional protection afforded by due process notice. Compare Goss vs. Lopez, 419 U.S. 565, at 575, indicating that the magnitude of an interest may exclude it from the zone of the 14th Amendment.

Motion overruled by unanimous commission action.

Statement of Facts

This proceeding arises from action by principal Rockwell on March 23, 1979, whereby Roberta Kempe, Jill Cosgrove and seven other students were simultaneously suspended from attending Van Meter High School for three days because:

"During the Vocal Music field trip to Lamoni on Thursday, March 22, 1979, several students on the Senior High bus were observed by our staff, chaperons, and students as participating in activities unbecoming a Van Meter student. These activities relate to the use and/or possession of drugs, alcohol, and smoking." (Emphasis added - as presently noted the underscored portions are unsupported by evidence).

Thursday, March 22, 1979 - To Lamoni:

At about 8:30 A.M., on the 22nd, two Van Meter school buses departed for Lamoni where a vocal music function was planned. The vehicle in issue ("High School bus"), was driven by course instructor Michael Cooper, supervised by chaperon Sue Baltzer and carried twenty to thirty-five Van Meter High School students (twenty, according to Baltzer - thirty to thirty-five by Cooper's recollection). The chaperon was seated immediately behind the driver; Roberta Kempe in the next row back; and elsewhere on the bus were Jill Cosgrove, the remaining seven suspendees, senior Dan Edwards and others. The alleged wrongdoing assigned as cause for the nine suspensions allegedly took place on the bus proceeding to Lamoni.

In keeping with the specific charge of all suspension orders (see e.g., hearing exhibit "1"), a complete record of the trip should reflect divers observations that each of nine students were in the possession of and using drugs, alcohol and smoking or a total of twenty-seven proscribed acts.

With relation to her responsibility of maintaining student behavior, Baltzer observed that some of the students were rowdy, restless and "hyper". This included Roberta Kempe who was in and out of her seat and who for this reason was reprimanded. Baltzer, subsequently reported to Raisch that the rowdy, restless behavior appeared unusual. The chaperon testified that while the bus windows were closed she smelled no alcohol or tobacco or drug odors relating to smoking. During the trip to Lamoni she observed no student involved with drugs, alcohol or smoking and she never related to anyone that she had. Baltzer, did assert that while in Lamoni she saw an identifiable student - Jill Cosgrove - smoking but that she wanted to make it clear that when she reported to Raisch she did not imply, nor did she intend to imply, that she had seen any of the other eight suspendees smoking. Though the record is confused as to details, Baltzer stated that subsequent to the trip down she obtained hearsay from a student(s), possibly a daughter, relating to tequila. No effort is made to connect it specifically to Roberta or one of the remaining suspendees and in fact Baltzer said it was on the Junior High bus. The record is either silent or ambiguous as to whether she mentioned this hearsay to Raisch but as noted above she did not observe and did not report observing use of alcohol. Except for the Cosgrove assertion, Baltzer's Lamoni observations are unremarkable and the trip back was unpleasant because of students made angry by an incident involving Cooper and student Edwards now noted.

Driver-instructor Cooper also complained of the restless acting out of his charges. He reprimanded Roberta for excessive aisle movement. He testified that on the trip down he neither smelled alcohol nor tobacco; he observed no student using drugs, alcohol or smoking; and made no report to that effect. In Lamoni he felt some Van Meter participants acted unusual and, in fact, he remembered two that appeared "starry-eyed" and seemingly "out of it" Having been advised by Edwards of student misconduct on the way down, Cooper delivered a harsch lecture to all of his charges before starting home. Cooper said Edwards did not tell him who was engaged in the alleged wrongdoing or get specific. While Cooper did not hear the same, Baltzer stated that Roberta and others angrily chanted: "Cooper, we will get you". "Edwards, we will get you". The teacher did not volunteer

any report and it is not clear when, what or if he did report. Complainant's attorney caused respondent Rockwell to say he did not discuss the matter with Cooper, at least not before the suspensions. He testified that he specifically did not tell the principal that he observed use of drugs, alcohol or smoking.

Roberta Kempe, who testified at length at the first hearing, proffered evidence here only by stipulation to the effect that on the way down she sniffed a pulverized compound of No Doze into her nostrils. We officially notice that No Doze is a nonprescription caffeine compound that can be legally obtained and used without age restrictions. Both respondents participated in the stipulation.

Dan Edwards was present at the hearing and designated for testimony. The parties, however, stipulated that it was not necessary to use him. His observations as to alleged wrongdoing are known only by hearsay assertions of the principal.

Friday, March 23, 1979 - Factfinding:

The investigation and factfinding giving rise to the 10:30 A.M. suspensions was conducted by respondent Rockwell between 8:30 A.M. and approximately 9:30 A.M. The alleged evidence procured originated from three sources: Dan Edwards; the "Boies" lists; and chaperon Baltzer.

Dan Edwards: At about 8:30 A.M. Edwards contacted Rockwell to complain of alleged wrongdoing on the Lamoni bus. Rockwell testified that Edwards accused two or three students of using drugs, specifically naming Roberta whom he saw sniffing a yellow substance. The record does not reflect what evidence, if any, Edwards offered to support the assertion of drugs as to two remaining unnamed students nor does it show that Rockwell interrogated Edwards as to what they were doing or if they were in possession of powders, pills, pipes or the like. Rather, Rockwell said the information was: "they were high on something and it was assumed they were using drugs". Under examination by complainant's attorney regarding a statement made on March 27, 1979, four days after the suspensions, Rockwell conceded that he then stated that "Edwards did not get specific on drug use". Rockwell's testimony contains nothing to indicate that Edwards accused the remaining six suspended students of any drug involvement and it is not clear that the reference to the two students in addition to Roberta were among suspendees.

Though the principal stipulated late in the commission hearing that Roberta was sniffing a yellow compound of No Doze, he earlier testified that Edwards did not identify the substance inhaled; that he (Rockwell) did not know what it was; that he considered any sniffing suspect; that he made no effort to learn what it was; and that the sniffing charge was the one most central in considering her suspension.

As to the use of alcohol Edwards made a general statement that he saw some students drinking brandy. There was no indication how many and if Rockwell was told if they included one or more of the suspendees. At first, he did not remember Roberta being specifically identified but

later he said he recalled Edwards mentioned seeing some students pouring brandy into soft drink containers and at one point he saw Roberta drinking from a pop can. Edwards is not made to say he saw her pouring brandy into anything. The respondent did not investigate the brandy charge beyond Edwards and there is no evidence that Rockwell satisfied himself as to how Edwards determined his belief it was brandy or other alcoholic substance.

Finally, Rockwell asserted that he does not recall Roberta being charged with smoking and indeed does not recall Edwards mentioning smoking. This is a good point to note that apart from the restroom smoking incident seen by chaperon Baltzer, Rockwell does not refer to any other item of evidence specifically accusing Roberta or the others with smoking.

Baltzer List: Rockwell states that in the area of 9:30 A.M. superintendent Raisch gave him a list of several students, which list was telephonically dictated to Raisch by chaperon Baltzer and concerned Lamoni bus behavior. The testimony as to the data on the Baltzer list varies according to whether Raisch and Baltzer or Rockwell give the account. As with Baltzer, Raisch testifies that the names designated students who were restless, acting out, "hyped" up and behaving unusual. The list was not available and Raisch did not name the students or specify that they included one, more, or all of the suspendees. The following testimony touches upon the alleged wrongdoing supposedly supported by the Baltzer list.

Bennett: "What did Baltzer tell you she had personally observed Roberta doing"?

Raisch: "I can't recall".

Bennett: "Did she tell you Roberta or others engaged in any of the wrongdoing you put in your suspension order"?

Raisch: "I do not remember."

Bennett: "Did she tell you she observed these students"?

Raisch: "She observed the [nine] acting hyped."

Raisch asserted that as the investigation was Rockwell's duty he gave the list to him and does not recall discussing it with him in any detail or interpreting the underlying Baltzer phone conversation. Rockwell acknowledged the Baltzer-Raisch list; said it involved seven to nine students; and that the list reflected the same activity complained of by Edwards (that is, the students were observed by Baltzer using drugs and alcohol on the bus). Rockwell conceded that he merely incorporated the list as further evidence and made no effort to check it out with Baltzer or Raisch. As bearing on his assertion that Baltzer named drugs and alcohol, complainant's attorney showed by a hearing transcript of March 27, 1979, four days after the suspensions, that Rockwell justified the lack of Baltzer's specific observations because "she was setting in the front of the bus". As noted elsewhere, Baltzer specifically denies that she reported drug or alcohol observations or that she even inferred such to Raisch. Moreover, while she testified to a Cosgrove restroom smoking

episode, she does not say she reported that and neither Raisch nor Rockwell refer to the incident as a specific basis for the smoking part of the suspension orders.

Rockwell testified that he considered the Baltzer list in two distinct ways to support suspensions: Procedurally, the mere presence of a student's name on the list increased the risk of suspension if that name appeared often elsewhere. From a substantive viewpoint, a name on that list was considered relevant as to drug, alcohol and smoking involvement.

Boies' Student List: Friday, at about 8:30 A.M., physical education instructor Boies overheard class students discussing the Lamoni trip. This conversation contained references to drugs, e.g., amphetamine pills, though Boies did not know if the speaker(s) was articulating observed drug use on the high school bus in general or as to specific students. To the best of his recollection, there was no mention of student bus drinking or smoking. Boies did not attempt to interrogate the students directly; did not know how many were on the high school bus; but did ascertain that the students would not freely go to the principal's office. While the transition is not clear, a short while later Boies heard Dan Edwards discussing bus trip problems with the principal; mentioned his overheard student conversation; and volunteered efforts to aid the investigation. He returned to class and instructed the students only to this extent: "If you want to get involved go into my office and make a list." When pressed for clarification of how he identified a "list", Boies responded, "I said to show what they knew of illegal activity". The record is silent as to whether he made efforts to assure that he was only dealing with students on the bus; whether he gave cautionary instructions as to the seriousness and possible consequences of their actions; whether he gave any guidance on the object, "illegal activity"; and as to whom and how many participated in his office. Boies testified that the project produced four or five lists which he delivered to Rockwell. He does not know who prepared the lists given him and he was never aware of content. Once the lists were prepared he made no efforts to check the accuracy and reliability of the data with the students.

Rockwell testified that his instructions to Boies was to explore the possibility of available Lamoni bus data; that he made no effort to advise Boies as to how he should go about this to insure reliable and relevant information; and that eventually Boies brought him five lists, three of which carried a signature and two of which were anonymous. Boies did not tell him generally which students provided lists; which individual list belong to given students; nor, since he didn't know, did he advise the principal as to whether part or all of the student authors were on the bus. Specifically, Boies left the two anonymous documents just that - anonymous. Rockwell testified that he had no knowledge if any of the five were on the bus and he expended no efforts to ascertain such fact. He also asserted that the lists were used as primary evidence standing alone; that the alleged student data thereupon was partial support for the suspension action; and that he felt it unnecessary to interview a given student maker to determine if the data was based on observation or hearsay. Moreover, he did not learn if the author was creditable; how the author determined the presence of an "illegal" or proscribed substance; or otherwise act to assure that the data was reliable and trustworthy. He used the documents,

even the ones tainted by complete anonymity, for the selection lottery. Rockwell said the list contained data generally as to involvement with drugs, alcohol and smoking, a given list for example having perhaps three student names and another five names. Though requested, the principal made no effort and in fact could not state specifically how many of the five lists named Roberta and exactly what a given author alleged was observed as to her drug, alcohol and tobacco use. Nor was the respondent able to furnish these details from the five lists as to each suspended student. He did state that there was mention of a substance such as a "little pill" and a reference to "crushing a yellow pill and sniffing". As to Roberta, he said the most common activity reported was "snorting a substance", though he did not know how many times she was cited for this. Even considering all lists (Edwards, Boies and Baltzer), Rockwell said that at the time he drew up the suspension orders he did not have evidence that each of the suspendees did all of the proscribed acts. Finally, respecting the Boies lists the principal stated that he had made the five available to the commission in connection with the June 1979 hearing.

Mr. Bennett, agency legal advisor, stated for the record that at the prior hearing the commission specifically requested the names of the five students and the information they allegedly provided; that respondents and attorney Sue Sietz refused to comply; that this fact is noted in the prior Kempe decision; and that the only lists provided the commission was one done subsequent to the suspensions. The latter was provided the agency and rejected for consideration in the case (see commission exhibit's "A" and "B").

Friday - 10:30 A.M. - Adjudication:

Respondents Rockwell and Raisch held two decision making conferences at midmorning, Friday, March 23, 1979. The subject for decision was the alleged bus wrongdoing and Rockwell delineated the evidence upon which to act as the Edwards, Boies and Baltzer lists. During the conferences it was noted that the name of some bus students fingered for wrongdoing appeared more often than others. For example, Rockwell said that Roberta's name was common to most lists. As reflected in the commission's June 1979 decision, Rockwell and Raisch engaged in a lottery like process that freed all accused transgressors named except those students whose names appeared three or more times.¹ At the current hearing the principal changed the test to five or more times. At any rate, the process was selective in that if alleged wrongdoing maintained low visibility punishment was avoided. Based on Rockwell's fact findings, a joint decision was made to suspend the nine students from school attendance for three days. Superintendent Raisch agrees that he was fully briefed by Rockwell as to the problem; was advised as to the morning's investigation results; and that by late Friday morning, and before consultation with the involved students, he joined in the

¹At our decision conference, agency members, predicated on independent recollection and prior hearing notes, unanimously agree that "three or more times" was the prior testimony.

decision to suspend. Immediately subsequent to this action, the principal caused to be prepared an identically worded letter dated March 23, 1979, addressed to the parents and informing that their child had received a three day suspension for "being involved and associated with . . . the use and/or possession of alcohol, drugs and smoking."

Rockwell concedes to his own attorney that had he followed the Goss hearing mandate he would have had fuller information upon which to make a suspension decision. Respondents made evidential concessions, and counsel admitted in argument, that their decision was ex parte, without consultation with the nine, and without according a hearing of any kind either before or after the suspensions. Despite this, superintendent Raisch insisted that he had done no wrong. Commissioner Williams questioned Raisch as to why the very man in charge of the entire trip was not involved in this inquiry:

Raisch: "I have to rely on Mr. Rockwell; I had other things to do; I was not involved; and I did not spend my day working on this thing with the nine students." (and further):

Bennett: "Did you give an analysis in your mind as to whether there was adequate evidence showing that Roberta and eight others had used drugs, alcohol and smoking".

Raisch: "The evidence was presented by. . . Rockwell. . . and Baltzer and I concurred - he had made a judgment and I concurred. I had before me the evidence of a certified qualified board approved administrator. I trust his judgment".

Friday P.M. - Students informed:

At approximately 2:30 p.m. that Friday a conference was held with all nine students and respondents present. According to Rockwell, its purpose was "because I knew we had to talk to them". At its inception, each student was given a copy of the identical form letter above mentioned announcing the child's suspension for drug, alcohol and smoking involvement. Upon reading the letter some of the students became agitated, hotly denied the charges and some of them used vulgar language in a show of displeasure. Rockwell concluded that no useful purpose would be served in proceeding so he opened the door and announced that they would all have a chance to consider the problem further on Tuesday night. Two of the students who had remained calm held back and requested further discussion then but Rockwell declined saying "Tuesday night." A meeting was in fact called for Tuesday but seemingly as the result of an intervening lawsuit on behalf of one student the respondents declined to engage in any further substantial discussion with the students. The record clearly shows that none of the students, including Roberta, have ever been permitted to confront those who made the drug, alcohol and smoking charges and they have not had the chance to explain or defend.

Tuesday, March 27, 1979:

On Tuesday morning superintendent Raisch called Larry Bartlett, attorney and consultant with the Department of Public Instruction. Mr. Bartlett testified that one of his duties is to help school administrators with problems concerning school law and in this regard he has consulted on a large number of student discipline problems. Bartlett said the superintendent initially noted they had not given due process to the students in issue. Among other things, Bartlett advised expunging all records and immediately holding a Goss type hearing for each student on the theory that such was appropriate and if the evidence was really there the students could not show prejudice despite due process problems. Bartlett's counsel as to hearing was ignored.

Findings of Fact

1. Predicated on the hearing evidence, including respondents' concessions, the commission finds that subsequent to the March 23, 1979, meeting with Dan Edwards and prior to any consultation with the alleged wrongdoing students, respondents engaged in an ex parte factfinding process and in adjudication, at the conclusion of which a joint decision was made to suspend from attendance at school for three days Roberta Kempe and eight others. This action was immediately documented in suspension orders identical in content and charging the same violations as to all nine students, all of which took place prior to any contact with the nine. It is additionally found that no emergency or threat of disruption existed at the time of the suspension action requiring continuance of student hearings and, at any rate, no suspension hearings were subsequently accorded.

2. The commission also finds that respondents' investigation and factfinding supporting the alleged multiple acts of wrongdoing, including the articulated reliance on observations of staff and chaperon, were fundamentally unfair and resulted in suspension orders that were predicated: (a) partially on alleged support and proof for which respondents knew or should have known there was lacking even a scintilla of evidence; and, (b) on the remainder, save possibly for a minor exception, by a factfinding process yielding alleged evidence of multiple wrongdoing, which process and resulting evidence was so substantially nonprobative and untrustworthy as to amount to no evidence.

Legal Conclusions-Discussion

I

First legal conclusion: Respondents' failure to accord Roberta Kempe and the other eight students the required hearing prior to suspension or at any time thereafter was a denial of procedural due process contrary to the Fifth and Fourteenth Amendments, U.S. Constitution. Such inaction is also professionally culpable by reasons of Chapter 272A, 1979 Code of Iowa, and commission criteria, Iowa Administrative Code, Professional Teaching, Chapters Three and Four.

Discussion

The school disciplinary process is not a totally accurate, unerring process, never mistaken and never unfair. (Goss v. Lopez, 419 U.S. 565, 579-580).

A

Students--Constitutionally Protected
Interests--Property and Reputation

In common with all persons, students possess several fundamental interests which enjoy constitutional protection and of which they may not be deprived by the state or its political entities without due process of law (Fifth Amendment, U.S. Constitution, as applicable to the states via the Fourteenth Amendment; see Ingraham vs. Wright, 430 U.S. 651, at 674, 1977 -U.S. Supreme Court--Student discipline case). A school district, acting through its officials, is such an entity operating schools, but at the doors of which "students do not shed their constitutional rights." Tinker vs. Des Moines Independent School District, 393 U.S. 503, at 506 (1969 - U.S. Sup. Ct.) In addition to the protection of due process, school officials engaging in action having a significant adverse effect on students must conform their actions to the procedures and requirements of state and federal statutes, including the Practices Act (Ch. 272A, 1979 Code).

Due process is, however, of prime concern here and the question as to its applicability in a discipline context turns upon the issue of whether a student enjoys a fundamental constitutional interest(s) that may be infringed upon or deprived by discipline procedures.

1. Property Interest:

Property or a property interest is a right specifically mentioned in and protected by the Fourteenth Amendment.² Protected interests in property are normally "not created by the Constitution. Rather they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits." Board of Regents vs. Roth, 408 U.S. 564, at 577 (1972 - U.S. Sup. Ct.). In the landmark school suspension case (Goss vs. Lopez, 419 U.S. 565), the United States Supreme Court held that the entitlement to a public education granted by Ohio invested students with "a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimal procedures required by that clause." (419 U.S. at 574). The Court noted that the Ohio student's entitlement to education was based on Ohio legislation directing education

²"Nor shall any state deprive any person of life, liberty, or property without due process of law." (emphasis added).

free for all residents between five and 21 years of age coupled with a compulsory attendance law. In view of Iowa's compulsory attendance statute (Ch. 299, Iowa Code) and other statutes providing a free education to all residents between the ages of five and 21 (see sections 282.1 and 282.61), Iowa students are entitled to an education and thus invested with a protected property interest.

2. Liberty Interest:

The Due Process Clause also prohibits arbitrary deprivations of liberty (see fn. 2 supra). The liberty interest not only protects students from unjustified bodily invasion (Ingrahm vs. Wright, supra), but also includes the right of integrity of one's reputation:

"Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, [compliance with the Clause is required]." (Wisconsin vs. Constantineau, 400 U.S. 433, at 437-1971).

Stressing that the Ohio authorities had, without a hearing, suspended the various students involved for up to ten days as the result of alleged misconduct, Goss notes an impermissible infringement of liberty (419 U.S. at 574-575):

"If sustained and recorded, these charges could seriously change the students' standing with their fellow pupils and teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the state to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution."

The misconduct for which the Ohio students were suspended largely involved allegedly disruptive behavior, including demonstrations and disobedience. In the instant case, the Van Meter students have been charged with much more serious misconduct. The allegations as to drugs alone raises a serious question of whether they were engaged in felonious conduct for which they could have been indicted. The need for serious process to prevent unwarranted liberty deprivation is even stronger than in Goss.

B

Procedural Due Process-Hearing

Once established that Due Process is applicable to suspension proceedings, a question remains as to what process is the student due. The answer is entitlement to both substantive and procedural due process, the former of which is considered in another division.

While the requirements of procedural due process are various and flexible according to the dictates of the Constitution, we are here primarily concerned with the essential element—the right to be heard:

"[M]any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." (Mullane vs Central Hanover Trust Co., 339 U.S. 306, at 313-1950).

"The fundamental requisite of due process of law is the opportunity to be heard." (Grannis vs Ordean, 234 U.S. 385, at 394-1914).

1. Suspension-Need for Hearing:

The Supreme Court has characterized the student's need for a hearing thusly:

"Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advise of others; and the controlling facts and the nature of the conduct under challenge are often in dispute. The risk of error is not at all trivial, and should be guarded against if that may be done without prohibitive costs or interference with the educational process.

X X X

"[I]t would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done. '[F]airness can rarely be obtained by secret, one sided determination of facts decisive of rights.' 'Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been derived for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.'" (Goss vs Lopez, supra, at 580). Emphasis added.

2. Goss vs Lopez Hearing Rule:

In Goss the involved students were suspended for periods of ten days or less. The Court, on the issue of hearing, articulated the following constitutional mandate (419 U.S. at 581):

"Due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school."

Subsequent to the investigation and factfinding of March 23, 1979, the respondents engaged in an ex parte adjudication at the conclusion of which it was decided to suspend Miss Kempe and eight other students. At about 10:30 A.M. Rockwell prepared the nine orders of suspension and contacted those parents available to advise them. At 2:30 P.M. the orders were served collectively on all nine, some of whom responded in verbal agitation. Rockwell told all that there would be further discussion on Tuesday, March 27, 1979, and he refused to consider the issue further even as to two or three students who remained calm and requested additional conference time. To this point nor at a subsequent time did respondents accord the students an opportunity to be heard respecting the numerous charges of wrongdoing.

This fact did not escape their notice. On Tuesday, March 27, 1979, attorney Bartlett was informed by superintendent Raisch that they had not provided the students due process. Bartlett advised respondents of alternative remedies including the necessity of yet holding a Goss hearing on the theory that if the hearing actually supported the charged wrongdoing the students were not prejudiced by the defect. In our opinion, there is yet another reason why Bartlett's advise was sound and should have been followed. For reasons considered under "Second Legal Conclusion", the respondents may have seen the error in relying on persons such as Cooper and Baltzer as support for the specific wrongdoing (Exhibit "1"); may have been forced into a critical evaluation of the alleged evidence produced by the evidentially infirm and untrustworthy "student lists"; and may have disposed of the bus issues in a manner that was fundamentally fair and in keeping with time honored precepts of due process. Perhaps some of Bartlett's suggestions were followed, but the one of most importance, a hearing, was ignored. At our second hearing respondents and their counsel, as part of the evidential record and in argument, concede that in connection with the suspensions they did not afford the students an opportunity to be heard.³

There remains considerations of Goss and our role under Chapter 272A, 1979 Code. That decision is, of course, binding on all school districts and it effectively repeals state and local suspension laws and policies in conflict therewith. It also adds to that legal jurisprudence commonly called "school law". In other words, Goss is a law uniquely applicable to school discipline and it is a school law of Iowa. In this regard, agency criteria provides (Rule 640-3.1(1)a):

"A violation of any of the school laws of Iowa constitutes a violation of criteria of the commission."

³Commissioner Williams in the dissent notes the unchallenged assertion by Bartlett that respondents knew of a due process problem at least as early as four days after the suspensions; also notes their current hearing concession; and contends it is now obvious that they intentionally tried to mislead the commission at the June 1979 hearing in stating unequivocally that they were aware of Goss and met its requirements. Based on independent recollections of the issue and hearing notes, Williams is accurate as to their prior position. We were, however, not misled. It was clear to us at that time that no effort was made to follow Goss.

We hold upon the evidence and applicable law that respondents violated this criteria and for the same reasons are also in conflict with additional rules (Iowa Adm. Code, Professional Teaching, Chapters Three and Four):

1. Rule 640-4.9(1) - Resolve discipline problems in accordance with law.
2. Rule 640-4.5(3)b - Adhere to and enforce district policies and school law.
3. Rule 640-3.3(1)d - Not to expose students to unnecessary embarrassment or disparagement.
4. Rule 640-3.3(1)c - Protect from conditions harmful to learning.
5. Rule 640-4.12(8) - Exercise discretion and reasonable judgment in use of authority.

In conclusion we also note, though dates and minutes are not available, that the district probably had a due process hearing policy for administrative suspensions which was not followed in this case. See complainant's Exhibit "2" and in particular principal suspension, page 3.

II

Second Legal Conclusion:

Where government undertakes to punish for alleged wrongdoing, substantive due process and the precept of fundamental fairness require that the evidence relied upon as supporting the offense designated have a basis in fact. Such constitutional considerations also proscribe punishment where the alleged proof arises from a factfinding process that is arbitrary, evidentially unsound and inherently untrustworthy.

A

Discussion

Preface:

Citation of authority is unnecessary for the proposition that it is fundamentally unfair to convict one for a specific offense on the alleged observations of witnesses when it is known or should have been known that such alleged support has absolutely no basis in fact. Moreover, the United States Supreme Court and the Iowa Court require that punishment of alleged misconduct be predicated on evidence gathered by methods that are evidentially sound and inherently trustworthy. Obvious examples are the cases invalidating convictions based on evidence extracted by physical or psychological coercion.

Instant Case:

The following considerations of the alleged support for the discipline is to be understood in light of two background factors: (1) Though the problem specifically involves Roberta Kempe, the commission's professional interest is broader and concerns eight other students who, with Roberta, were treated collectively; were subject to the identical investigation and factfinding process; and, were all found to be suspendable for having committed the identical offenses, using drugs, alcohol and smoking. As to the evidence to support these charges each student, not just Roberta, was entitled to due process and fundamental fairness. (2) As respects the so called "student lists" procured by Boies, it was never clear at the last proceeding nor is it now as to whom was responsible for a given list and exactly what it involved. Two were entirely anonymous. In large part, our efforts to clarify the relevance and trustworthiness of the lists were effectively frustrated by respondents' refusal to answer questions in this area. Accordingly, we assume that our record is complete and contains all the student list data relied upon by Rockwell and Raisch to find that each of the nine used drugs, alcohol and smoked.⁴

Evidence of Specified Wrongdoing-Baltzer and Cooper:

It is incredible that respondents found and specifically adjudicated that suspension of the students was defensible in that Baltzer and Cooper observed all nine using drugs, alcohol and smoking:

"[S]everal students were observed by our staff [Cooper], or chaperon [Baltzer]. . .[using and/or possessing] drugs, alcohol and smoking". (Exhibit "1")

As respondents knew or should have known, this assertion is not only blatantly inaccurate but absolutely contrary to what Cooper and Baltzer reported and what they stated at this hearing. Both testified in various ways that during the bus trip to Lamoni they had not seen or smelled drugs, alcohol or smoke nor observed Roberta, the remaining eight or anyone else

⁴Respondents' refusal as to our inquiry into this alleged evidence is seemingly predicated on 20 U.S.C. Sections 1232g, et. sec. (Family Educational and Privacy Rights.) In a situation where the effort is only to obtain from a student his or her observations of the alleged wrongdoing of a third person, respondents' reliance on this records legislation is wholly without merit. The lists are not "educational records" as defined (20 U.S.C. Section 1232g - "records, files, etc., which contain information directly relating to a student".) They were gratuitously prepared by the students not the institution; and, at any rate, the commission has lawful access to "student records" (20 U.S.C. Section 1232g - "pursuant to lawfully issued subpoena"). We note once again the professional obligation imposed on all members of the teaching profession to assist not frustrate professional inquiries - see Rule 640-3.3(3)e.

use such. Indeed, Rockwell himself told complainant's attorney he did not even talk to Cooper before the suspensions. Following is the extent of their testimony which might be viewed as having the slightest bearing:

1. Cooper - Van Meter to Lamoni: Observed students acting out, restless and "hyper" - had to reprimand Roberta and others. Lamoni. Observed two starry-eyed strange appearing Van Meter students. Students did not include Roberta and not identified as among suspendees. Lamoni. Student Edwards relates problems and wrongdoing on the trip down. Cooper can not breakdown Edward's general assertions to assign specific acts of wrongdoing to identifiable students and testifies that Edwards did not tell him that the nine suspendees were using drugs, alcohol and smoking.

2. Baltzer - Van Meter to Lamoni: Students, including Roberta were rowdy, restless, "hyper", moving around. Lamoni. Observed one identifiable Van Meter student smoking in girls room. Said not Roberta and did identify girl as Jill Cosgrove. Lamoni trip back: Obtained hearsay from a student with reference to Tequila allegedly seen on the Jr. High bus but was not told that Roberta was involved. Baltzer testified she did not tell Raisch or Rockwell she had observed any of the nine using drugs, alcohol or smoking.

Evidence of specific wrongdoing-Dan Edwards:

The respondents' evidence, at its extreme, makes Edwards show but one specific act of alleged wrongdoing (Roberta sniffing a yellow powder-now stipulated as No Doze); one general allegation of drug use; and two allegations as to alcohol. As to the alleged drug use by two other unnamed students, Rockwell said the information given was that "they were high on something and it was assumed they were using drugs." The principal conceded that he did not interrogate Edwards to establish the accuracy of these charges. This is supported by a recorded Rockwell statement four days later wherein he said. "Edwards did not get specific on drug use." As to Roberta and alcohol, the record seems to contain an Edwards-Rockwell syllogism. Edwards alleged that he saw some unnamed students pouring brandy into pop cans and at a later point saw Roberta drinking from a pop can.

At one point Rockwell indicates that Edwards did not complain of smoking by any of the nine students. Indeed, apart from Baltzer fingering Jill Cosgrove for smoking in Lamoni, Rockwell produced no evidence specifically involving Roberta or any of the other suspendees with smoking. The record is mute as to whether Rockwell knew of the Cosgrove incident. Edwards specifically supports only the use of No Doze. He was at the hearing and if he had more relevant evidence respondents had a chance to call him.

Evidence of Specific Wrongdoing - Boies' Lists:

The serious evidential value of these lists is so minimal as to warrant scant consideration. Boies imposed absolutely no safeguards to assure any measure of accuracy or trustworthiness of the data. At the very least

he should have known that the alleged "evidence" he was proffering was requested of and obtained from students known to have been on that bus. Not only was he ignorant as to that fact but even gave Rockwell two lists by anonymous authors which had equal weight in the subsequent lottery-like selection process. Of even greater concern is the fact that Boies gratuitously infected the factfinding process with alleged evidence held out as direct student observations when in fact, as he and Rockwell had to concede, it could all be hearsay. Rockwell compounded the infirmities. He admits that he assumed the five authors were bus students, but that he lacked actual knowledge; admits he used in the selection process names of suspendees contained on at least two lists about which he knew nothing; admits that the lists could have been nothing more than hearsay; and, most damaging is the fact that Rockwell used the five lists as direct evidence that all nine students got fixed, drank and smoked. Our Statement of Facts above notes the extent of the actual drug and alcohol items mentioned by Rockwell at the hearing as contained in these lists. While there was mention of "little pills", "sniffing" and smoking, Rockwell was unable upon request to tell the commission what precise allegations all lists contained dealing directly with Roberta's involvement with contraband. Nor, could he do the same with each of the other suspended students. Even assuming the information suggest drug and alcohol involvement of some kind, its relevance is so minimal as to render the Boies' data fundamentally unfair.

Respondents may contend that the record does not fairly illustrate the value of the lists. If so, that is the result of respondents' intentional actions in refusing to provide us with all relevant information. We do not, as Mr. Krausman suggests, punish their refusal based on his advise. We assume respondents have provided us with a complete record of these matters.

The reader will recall that ultimately the respondents made the suspensions depend upon the number of times a student's name appeared on a total of seven lists (Edwards, 1; Baltzer, 1; and Boies, 5). The selection process on its face is arbitrary and shocking to one grounded in traditional evidential processes to determine culpability. The process was rendered all the more unfair when one realizes that some 70% of the lists used were the entirely infirm and evidentially unsound Boies lists. Under all of these circumstances the involvement of these lists, by themselves, injected fundamental unfairness into the proceedings.

B

Summary - Attitude, Creditibility, Agency Criteria:

The issue before the commission is not whether the nine students engaged in proscribed acts supporting their suspensions, but rather whether such penalties rest on proceedings which were fundamentally fair and in accordance with controlling constitutional, statutory and professional requirements. As Goss teaches, suspensions, even for a short period, are serious because of the potential infringement upon the right to an education and to one's reputation. Here, the nature of the charges make the case all the more serious concerning reputation whether suspended three days or three months. We can assume that respondents' reference to drugs was not as to use of lawful drugs, but rather the possession and use of proscribed or illegal drugs. Usually, such conduct is a serious

criminal offense, upon indictment for which extreme personal, family and citizenship consequences attach. Roberta, clearly illustrates the need for fairness and procedural and substantive due process. On March 23, 1979, the only evidence before Rockwell of her alleged drug involvement was Edwards' assertion (and that of others) that she sniffed a yellow powder. Edwards did not know what it was and the principal had no interest in learning its nature. He assumed it was a proscribed substance without further inquiry. His attitude at the hearing is likely relevant on his lack of motivation to do more. He said: "as a parent" any such sniffing activity is wrong and suspect (cf. footnote 5 exposing Rockwell's fallacy). But Roberta was being judged not by a parent but by an official of government who was duty bound by due process to do more. We would have to be blind not to know that many of Roberta's peers, teachers and community members came to regard her as a drug user, probably into something on the order of cocaine, a felony. Some sixteen months later, respondents concede here that the yellow powder was a caffeine compound known as No Doze which she could lawfully ingest orally or otherwise.

In this quasi judicial proceeding, issues of attitude, demeanor and creditibility are relevant about which we note the following:

a) Earlier in these proceedings, Rockwell noted that he chose to handle this matter as a collective or group problem and many of the methods he used were selected on the principle of administrative expedience. Respondents early on displayed a belief that the discipline was minor and not a serious matter, something previously characterized as a "three day vacation".

b) The evidence stresses the drive for expediency. Neither Rockwell nor Raisch had personal first hand knowledge of the case. Yet, between 8:30 A.M. and 10:30 A.M. they learned of a problem; investigated it; determined nine students had used drugs, alcohol and tobacco; and, suspended them. That's 13.3 minutes per student; not much time to conclude numerous criminal offenses were involved.

c) Superintendent Raisch conveyed a clear attitude of non-seriousness and non-concern. The record reflects clearly that he assumed an active part in the suspension proceedings. Yet, he stated that he had not examined or analyzed the underlying evidence; that he was busy and did not have all day for the nine students; and, at any rate, it wasn't necessary as he would rely on the judgment of a certified board approved administrator. As a legal and professional proposition, Raisch was as much responsible to assure that those students were treated fairly and accorded due process as Rockwell. This is especially so as he was specifically involved in the case. Moreover, the superintendent has a professional and legal responsibility to safeguard the education and welfare of every child falling within his jurisdiction. The school system exists for the education and well-being of students and not for staff or management, including the chief.

d) Further examples of the lack of seriousness and the desire for expediency are reflected in the way respondents reacted to items of alleged primary evidence. Rockwell considered Cooper as direct evidence to support

drug and alcohol use when, in fact, he told attorney Reich "he had no discussion with him" regarding the trip on Friday, March 23, 1979. An hour later he told our legal advisor that he used Cooper because "thats the evidence I had". Rockwell's former assertion is more creditible and we find he had no evidence from Cooper when he acted.

Rockwell's assertion that he relied on Baltzer's statement to show drug, alcohol and smoking involvement is also not creditible and we reject it as evidence. Raisch's and Baltzer's testimony clearly show that Rockwell lacked any such support.

Finally, it is incredible that Rockwell gave such weight to the Boies documents even though he concedes that he did not know if the authors were on the bus and admits the lists could be hearsay. Even worse is the fact that two of those documents were anonymous. If Rockwell undertakes to adversely affect the property and reputation rights of his scholars, he is professionally and legally bound to a greater degree of care than shown here.

e) Perhaps the most unfair and untrustworthy aspect of the proceedings was the lottery-like method of counting names - three and your out! There are two distinct substantive evils in such process. First, in a setting of alleged student peer wrongdoing it is balatently discriminatory. In the context of Rockwell's elimination it can be assumed that students other than suspendees were named one or more times as transgressors but they were arbitrarily freed because enough other scholars didn't see or finger them. There is no rational basis to free these alleged offenders. At the last hearing, Roberta complained that she and the others were selected as examples and this discriminatory process of allotting the wrongdoers suggests some validity to her theory. The most grievous evil in the selection process is its loaded propensity to select, as offenders, persons engaged in lawful and innocent activities. It is logical that such persons are not as likely to hide activities, while others engaged in criminal acts are wont to take precautions. Once again Roberta's case is illustrative: Arguably, she had no reason to conceal the ingestion of a substance which was neither contraband, nor the use thereof illegal. As it developed, the record reflects that apart from the Cosgrove Lamoni smoking incident, Roberta is the only other suspendee specifically identified for designated suspension offenses. That is, she was accused several times as a drug user in that she sniffed a yellow substance. Perhaps these observations accounts for the fact that her name had the highest exposure -six out of seven among the lists.⁵

One final note on the selection process. Less than three months after the suspensions, Rockwell clearly and unequivocally told this agency that the criteria for suspension was a name appearing three or more times. He

⁵This problem is broader than Roberta's childish and silly act. E.g., a student with a serious heart or other health condition could have started an attack on the bus; be seen as unusual, break an amil nitrate capsule; sniff it; and, be in serious trouble under Rockwell's procedure and attitude toward sniffing.

now contends the test was five or more times. We find the recent assertion not creditable and reject it on the basis of independent recollection and notes of commission members from June of 1979.

Predicated on the above, the investigation, factfinding, resulting evidence and suspension adjudication resulted in fundamental unfairness to suspendees and a denial of substantive due process. Such actions are in conflict with all of the commission criteria of professional practices cited under "First Legal Conclusion", Supra, and are here incorporated.

Decision

In June of 1979, we issued a reprimand in this case. Commissioner Williams in the dissent argues that there is new evidence and additional reasons for involving the teaching certificates. We agree with the dissent that the case is now stronger for enhanced sanctions. Indeed, at our conference we explored the possibility. Subsequent to a discussion with counsel we decided on the following course:

1. Though we have no power to so order, in view of the hearing concession as to No Doze and the drug charge causing her suspension, it would seem appropriate that Robert and Roberta Kempe receive an apology and that the district staff and high school peers be advised that the drug charge was in error.

2. In keeping with our jurisdiction over the teaching profession and in view of our criteria in Chapter Four, Iowa Adm. Code, regarding staying current on important matters of school administration, you are advised in future suspension and other student discipline matters to follow constitutional mandates, controlling statutes and the professional criteria of this agency and the principles and positions set out herein.

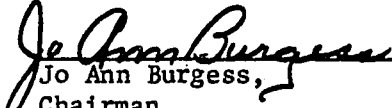
3. The official reprimand which follows is issued under Section 272A.6 of the Code and the same is to be submitted by the director, along with this decision, for lodging with the certification files of respondents.

Reprimand

TO: William Raisch and Jack Rockwell,
School Administrators, Van Meter, Iowa

You and each of you are, in accordance with the terms of Section 272A.6, Iowa Code, professionally reprimanded. Your actions in suspending Roberta Kempe, Jill Cosgrove and the other seven students on March 23, 1979, was unprofessional, not in accordance with fundamental fairness, and violated the students' rights to due process. In future such cases you are admonished to comply with the professional criteria of the commission and the principles set forth herein.

Dated
September 15 1980



Jo Ann Burgess,
Chairman

APPENDIX I. IPTPC HEARING RECORD 80-17

Iowa Professional Teaching
Practices Commission

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Sue Torres)	
and)	Case 80-17
Juanita Armstrong,)	
Complainants)	
)	
vs)	RULING-MOTION
	)	TO DISMISS
Roger Aceto,	)	and
Respondent	)	HEARING DECISION
)	

I

Motion to Dismiss

Subsequent to the grant of hearing, respondent's counsel filed a motion to dismiss contending the commission lacks subject matter jurisdiction of the issues involved. In considering our disposition of the motion, one unfamiliar with the procedural and factual background may refer to Divisions II and III infra. A cursory examination of The Iowa Professional Teaching Practices Act (Chapter 272A, Iowa Code) demonstrates the motion is without merit.

With an aim of promoting quality professionalism in education, the Practices Act created a nine member state agency having personal jurisdiction over members of the teaching profession, a statutory definition including all educators required to hold state teaching certification (Section 272A.2). From a subject matter standpoint, the agency's mission is twofold: First, it is required to establish professional criteria regulating the teaching profession (Section 272A.6). With such criteria in place, the second phase is adjudicatory. The statute authorizes evidential proceedings to determine the issue of criteria violations and professional liability (Section 272A.6):

"A violation, as determined by the commission following a hearing, of any of the criteria so adopted shall be deemed to be unprofessional practice and a legal basis for [decertification].

x

x

x

"The commission...shall exonerate, warn or reprimand the member of the profession or may recommend the holding of a [decertification proceeding]."

Respondent's motion and its "collateral attack" theory ignores this unambiguous grant of subject matter jurisdiction to adjudicate an alleged "violation...of any of the criteria so adopted." Moreover, the grant of subject matter jurisdiction respecting professional liability has, as to its exercise, no material relationship to the fact that another entity (e.g., school board) has adjudicated the same factual problem. Whatever the purpose of the proceedings before the Des Moines board, it did not and could not adjudicate violations of Section 272A.6 professional criteria; it could not impose the specified professional sanctions; and it had no power to consider the issue of removal from the teaching profession.

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While examples are legion, one illustration clearly reflects the fallacy of the motion's collateral attack premise: Suppose an altercation ensued following the principal's "spic" comment in the lunchroom, whereupon one or both boys were injured by unlawful physical violence. Subsequently, the district board terminates the administrator, after which the parents file complaint here for decertification. Surely, no one would contend that the commission lacked power to examine the issue of removal. Such is, however, precisely the legal thrust of the motion. It teaches that where the board has finally disposed of a controversy, the commission is powerless as to that subject matter. This position, at its extreme, would even preclude the school board from filing a complaint aimed at decertification for unfitness to teach.

Aceto is a member of the teaching profession (Section 272A.2). The complainants bring this proceeding on behalf of students involved (Rule 640-2.4 (1) (d), Iowa Administrative Code, Professional Teaching [640]). The allegations sufficiently raise an issue as to the alleged violation of our criteria. Accordingly, the agency has both personal and subject matter jurisdiction. Motion denied.

II

Statement of Case

This proceeding, involving alleged ethnic slurs, was filed on November 11, 1980. Subsequent to inquiry and staff hearing recommendation, the commission, on December 18, 1980, assigned the case for evidential proceedings on January 30, 1981. Respondent's answer and motion was filed January 16, 1981, with resistance thereto furnished five days later.

At the January 30, 1981, hearing attorney Edgar Bittle, counsel for the Des Moines school board furnished by the board to assist Aceto, appeared on behalf of the respondent. Robert Fitzsimmons, head, secondary school principals, also appeared. The complainants were represented by Des Moines attorney Don Nickerson. On October 1, 1980, all parties to this complaint were parties to a proceeding involving comparable subject matter before the Des Moines

School board. Counsel here stipulated that the board hearing transcript, captioned "In the interest of Joe Armstrong and Jim Torres," could constitute the evidential basis for agency disposition of this case. The stipulation was approved and together with a tee shirt exhibit and collateral written materials, the transcript comprises the hearing record.

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III

Statement of Facts

Preface: In addition to the lunchroom incident outlined below, the complaint alleges a May 13, 1980, "spic" remark by respondent to student Torres in connection with a school bus incident. Because of our disposition as to the lunchroom episode, it is unnecessary to resolve the factual dispute arising out of the bus related allegation. Dispute where creditability resides--with administrator or student--our decision is approximately the same. Accordingly, the bus related incident is not considered further. Also, we do not resolve the apparent dispute as to the date of the lunchroom allegation. The date is not material to our decision and we arbitrarily accept the date assigned by the students.

Facts: On May 6, 1980, in response to a discipline assignment by instructor Ben Tillotson, Jim Torres and Joe Armstrong were together at a table in the lunchroom of Des Moines Goodrell Junior High School. At that time both were 14 years of age, Goodrell students, and of hispanic background. Though the record reflects nothing remarkable as to the dress of Jim Torres, Armstrong testified that he was wearing a tee shirt, across the back of which were the words "Super Special." Janita Armstrong's testimony corroborates her son's description of the shirt. Tillotson and the respondent assert that the shirt they observed in the lunchroom contained the word "spic", such testimony taking support from the statement of instructor Kimberly Duffe. According to Tillotson, the garment announced "Number 1 Super Spic." Goodrell vice-principal, Roger Aceto, testified that such were the words he saw on Armstrong's back. Duffe, while without knowledge of the relevant lunchroom period, stated she had seen Armstrong wearing a shirt containing the words "Super Spic." Both Joe and Juanita Armstrong deny that there ever was any such shirt or that the student had ever worn any garment with the word "spic." Exhibit "A" (board hearing) is a tee shirt proffered by Mrs. Armstrong as the one worn by her son. Across its back printed in black are the words "SUPER SPECIAL." The last five letters (ECIAL) are significantly faded, the last three being almost illegible. The blocked "E", through some process of wear, looks more like a blocked "I" than "E." With the last three letters so indistinct to a viewer, at a casual glance one could take the impression of the words "SUPER SPIC." The back contains no other letters or numerals. Both the respondent and Tillotson denied that exhibit "A" was the shirt worn by student Armstrong on the day in issue.

Ben Tillotson testified that when he located Joe Armstrong in the lunchroom and saw the shirt, he queried Roger Aceto as to whether the latter had seen it. The record shows that at this point the vice-principal and Tillotson approached the table area where Armstrong and Torres were standing or setting. Other than these four, it appears that no one else was in the immediate area. The respondent testified that he came up to Joe Armstrong and stated, "Joe, I thought you were American Indian." Tillotson noted that due to the lunchroom discipline situation the boys should not be together. Accordingly, the transcript makes Aceto remark: "You [Torres] can't sit with this spic [or] no spics set together at this table today." At the time of this comment the record reflects little or nothing as to the attitude, demeanor or actions of Jim Torres. There is nothing to indicate that either in fact, or by way of impression, Aceto had concluded or could reasonably conclude that Torres' deportment signified that he embraced or adopted whatever image Armstrong projected by reasons of the alleged tee shirt. While Tillotson's recollection differs as to Aceto's remarks ("Joe---you are not a spic?"), Torres and Armstrong essentially remember Aceto's version of "no spics set together."

Jim Torres testified that when respondent used the term "spic," the administrator was loud and not fooling around; Joe Armstrong agreed with that assessment; but Tillotson said, "he was...gently reprimanding the kid for having the shirt on." The respondent testified that the comments were prompted not by the student's ethnic background but as the result of Armstrong's shirt; that they were made in a friendly spirit; and that at their conclusion the boys were smiling and did not appear offended. Aceto grudgingly conceded that it appeared that the parents were offended. Both students testified that the use of the word "spic" was offensive. The principal subsequently apologized to the boys whom he says expressed no concern over the incident. With respect to the use of the term "spic," Roger Aceto summed up his attitude and philosophy as follows:

Board member Gentry:

Q. "Is it possible that you could have just explained to him [Armstrong] your concerns, that there would be made comments about the shirt and someone else might call him a spic?"

A. "Thats possible..."

x x x

Q. "You are no doubt aware of the fact that there are buzz words that might set people off?"

A. "Yes."

x x x

Q. "Mr. Aceto, will you explain to me how the term "nigger" or "spic" can be used in anything other than a derogatory sense?"

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A. "I suppose it's like Gringo's Restaurant being offensive to non-Hispanic people, and myself I don't consider that offensive at all. It's like Flip Wilson being on TV and saying, "You better behave yourself, nigger," and using jokes where "nigger" is used frequently, and I don't know a lot blacks that find that offensive.

"I think it's how the word is used. I can't explain it any better than that. Several people have come and said basically the same thing, it's how the word is used and the context and the inflexion of the voice and what you are trying to present to someone else with your demeanor, and that's how the receiver gets it. That's how I feel about a word."

Q. "Would you allow as how some persons would be offended, regardless of how the word was used or the context of it, by being called a spic?"

A. "In a very narrow scope, yes, uh-huh."

IV

Findings of Fact

1. The commission finds that at about noon on May 6, 1980, Goodrell Junior High students Joe Armstrong and Jim Torres were together in the school lunchroom. Both students are ethnically Mexican-American.

2. It is also found that at this time the respondent and instructor Ben Tillotson approached the two students with Tillotson noting that due to their discipline status they were not to be together.

3. It is further found that at this point principal Aceto directed remarks to Armstrong and Torres a portion of which designated them as "spics."

4. It is additionally found that when these remarks were uttered, Roger Aceto knew both boys were ethnically of hispanic origin.

5. Finally, assuming arguendo that Armstrong's appearance, dress and relationship to Aceto was perceived as justification or license to use the term "spic" as to Armstrong, we

find nothing in the record to support any such perception by Aceto as to Jim Torres.

V

Conclusions and Criteria

1. It is never professionally permissible for a member of the teaching profession to make personal references to students in a demeaning, flippant, cute, derogatory or other negative manner. Van Roekel vs. Cram (school principal), commission case 80-12 (November 1980); Chapter 272A, Iowa Code and profession criteria thereunder.

2. The manner or spirit in which an educator utters racially demeaning words to minority students does not nullify the fact of the utterance. Resetar vs. Board of Education, 399 A.2d 225 (Court of Appeals--Maryland--1979).

3. Educator, though intending only narrow and selective publication of derogatory remarks, is professionally responsible for unintended broader publication. Cram, supra

4. The following criteria of professional practices are involved (Iowa Administrative Code, Professional Teaching [640]):

- a) "Shall...protect the student from conditions harmful to learning." Rule 3.3(1) C.
- b) "Shall...not expose...to unnecessary embarrassment or disparagement." Rule 3.3(1) D.
- c) "Shall not show disrespect for or lack of acceptances..." Rule 4.12(3).
- d) "Shall provide leadership...by appropriate example." Rule 4.12(8).

VI

Discussion

While the record reflects pointed factual disputes, at least these things are clear: First, during the lunchroom encounter the respondent directed the term "spic" at and as a personal reference to Torres and Armstrong ("...no spics set together"). The minority status of both boys was obvious. Secondly, we officially notice that the word "spic" is commonly understood as a demeaning and derogatory reference to

hispanic persons.¹ It is the equivalent of "wop" (Italian) and "nigger" (black). Thirdly, where an outsider (especially a school administrator or teacher) calls a hispanic child a "spic", the situation is ripe for resentment and serious consequences. This case is ample proof of that statement. However perceived by Aceto, the utterance has directly resulted in the involvement of two state and two local government agencies, hundreds of man-hours, thousands of dollars and much distraction.

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A

Use by educator of words such as "spic," "nigger," "whore," and the like as personal reference to students is professionally impermissible.

Prior to this proceeding it has never been suggested by those with local jurisdiction that it was appropriate to label Torres and Armstrong "spics." In proposed findings prepared for the Des Moines school board under date of October 15, 1980, furnished as record material here, Attorney Edgar Bittle notes:

"[T]he administrative investigation has resulted in Mr. Aceto being cautioned about any further recurrences of this nature and a letter warning him... will be...placed in his personnel file; and that he has been admonished to exercise sound professional judgment in relating to students..."

School board member Nolden Gentry considered the issue in a dissenting opinion and concluded that within the context of the lunchroom incident it is impermissible to direct an ethnically demeaning epithet against a student. We agree.

While a teaching profession member may instruct regarding the evil of such terms; may resort to them for the purposes noted in footnote 1 above; it is professionally improper under Chapter 272A and its Criteria to use demeaning terms (e.g., "spic,"

1. According to the American Slang Dictionary, 2nd ed. (Weatworth--1975), "spic" evolved from "splogoty." See also "spig" and "spick." Originally the word was applied to Italian persons (no speaka da english), but later was used specifically to characterize Mexicans and generally to include Spanish Americans.

Though use of the word is usually demeaning and suspect, it may be permissible in a limited context: E.g., in this hearing decision or other legal documents; in an academic class setting, such as a human relations project; and within the limits of good taste perhaps in a class play.

"nigger," "whore," "fag," "stupid," and so on) as a personal reference to a student, minority or otherwise. Such is the effect of our recent Cram decision:

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"There are no circumstances where it is professionally permissible for an educator, verbally or in writing, to deal with students in a demeaning, flippant, 'cute,' derogatory or other negative way." Van Roekel vs Cram (Humbolt principal), case 80-12 (November 1980).

Members of the teaching profession, especially those charged with responsibility for an entire physical plant program, must exercise a high degree of professional skill, care and concern toward students. Contrary to Aceto's position elsewhere, the issue of how a cafe proprietor or "flip" Flip Wilson conducts themselves has little relevance to the professionalism expected and required of educators entrusted with generating quality citizens.

We are not unmindful of the contention that the term "spic" was employed in a light and humorous vein. If such is permissible in this context, is it then also proper to jokingly call a student "nigger," "whore," faggot," "basturd," and so on? In our opinion, such words are not to be used as a personal reference to a student, notwithstanding the manner or spirit in which they are written or uttered. Compare Resetar vs Board of Education, 399 A.2d 225 (Maryland Ct. Appeals, 1979; "look at those jungle bunnies. Someone ought to feed them bananas."):

"Moreover, it is significant here that Resetar does not deny the occurrence of the 'jungle bunny' incident. He merely takes issue with the interpretation which should be put on it. He says he is not racially biased. The principal of his school said in his contacts with Resetar he found no reason to believe him to be guilty of racial prejudice. Resetar's attorney succeeded in eliciting from the member of the school staff who was in the immediate presence of the students to whom the 'jungle bunny' remark was addressed an admission that it might have been given in a bantering manner, as has been pointed out in the quotation from the hearing examiner's report. The manner in which it was given, however, does not erase the fact that the statement was made." (Emphases added).

Accordingly, we conclude that it is not permissible to use terms such as "spic" directed at and as a personal reference to a student.

B

Assuming arguendo presence of spic tee shirt, remark yet impermissible.

Roger Aceto contends that the "spic" remark was consequent upon and justified by the Armstrong tee shirt. He adds that the context was light and joking and Armstrong accepted that sense of the transaction and was not offended. Put differently, the vice-principal seems to say that an otherwise inappropriate transaction was legitimized by Armstrong's consent or at least by the appearance of invitation. Whether the shirt in fact bore the word "spic" is in sharp dispute. In view of the following comments, however, it is unnecessary to resolve the factual issue. For discussion's sake we assume a "spic" shirt.

First, we reiterate by this reference our professional discussion and conclusion noted in "A" of this Division.

Secondly, predicated on this record Aceto's concept of consent or invitation to use the word "spic" can not be imputed to Jim Torres, except through guilt by association. Torres had no such shirt and the transcript is absolutely void of anything showing that he embraced or even approved of such wearing apparel. Thus, even if proper as to Armstrong in isolation, here the remark impacted equally upon Torres, an innocent bystander alien to the spirit or context within which Aceto contends he was operating.

Thirdly, in educator--student transactions professional responsibilities often extend beyond the student to other students, parents and the community. We think the complainants had an interest and a reasonable expectation that members of the teaching profession not refer to their sons in a manner reasonably perceived as ethnically demeaning. There seems to be no sound reason why that proposition would not apply to the greater community, especially one with minority members.

Even assuming the "spic" tee shirt, there are obvious reasons in this broader context of responsibility why the comment was improper. Mrs. Torres could hardly be held to have waived her interest as to Jim since he wore no such garment. Moreover, it is a fact of life and common knowledge that while some minority persons use racial and ethnic epithets in their interactions, such are offensive and "fighting words" when employed against them by an outsider.² By way of analogy, it is perhaps

2. Nothing said here by way of argument suggests that the Torres or Armstrongs have engaged or engage in such interaction.

relevant to note the not untypical parental attitude of "I can call my child so and so but you had better not do such."

Members of the teaching profession, perhaps more than anyone else, stand in a unique position of trust with respect to societies' children from all backgrounds. Above all, we provide the role models that hopefully influence those children and at least equip them comfortably to survive, perhaps even add something of value to society. We are not oblivious of the gutter language, style, and attitudes that currently permeate and contaminate the school environment of every city. The teaching profession, of necessity to remain a profession, must be ever vigilant to combat these attitudes. However well intended, the use of racial or ethnic slurs as a personal reference to a school child simply is not in keeping with this important responsibility of the profession.

VII

Decision

In view of all of the above we conclude that the respondent's remarks were professionally improper and in violation of Chapter 272A of the Iowa Code and the professional criteria above cited. We have unanimously decided only to issue a Section 272A.6 warning at this time.

Warning

To: Roger Aceto

As noted above, there are no circumstances when it is professionally permissible to make personal reference to a student by use of a racial or ethnic term that is commonly accepted as demeaning and offensive. Your use of "spic" was unprofessional. As an educator entrusted not only with the well-being of students, but also to assure proper professional conduct of your staff you have a serious responsibility to protect against the exact evil which is inherent in and indeed arose out of the "spic" interaction. In future transactions, you are warned to abide by both the letter and spirit of this decision.

March 19, 1981



Jo Ann Burgess,
Chairman

APPENDIX J. IPTPC HEARING RECORD 82-18

IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION

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MERIDEE MAHAN
COMPLAINANT

VS.

JOAN KOLLMORGEN
RESPONDENT

CASE 82-18

HEARING DECISION

Statement of Case

The instant proceeding, alleging use by an educator of nonprivileged force injurious to a student, was filed on September 30, 1982. Conforming to agency request, instructor Kollmorgen furnished an informal response under date of November 9, 1982. That document will stand as respondent's formal Answer. Subsequent to inquiry and staff hearing recommendation, the commission, on December 10, 1982, assigned the matter for contested case proceedings, the date ultimately designated as February 18, 1983. Fort Dodge attorney Jerry Estes appeared with Meridee Mahan and Des Moines counsel James Sayre and Gerald Hammond represented Joan Kollmorgen. Evidentiary proceedings were commenced at 9:30 a.m. and concluded at 6:30 p.m. that date. All pending motions, objections and other evidentiary issues undisposed of are hereby denied or overruled.

Statement of Facts

(Preface)

Though the record contains some nine hours of testimony, our disposition is contingent only on resolving a sharp conflict of facts generated essentially but by three of the seven witnesses (complainant, Meridee Mahan and daughter, Donelle; and respondent, Joan Kollmorgen). The three students who were at the reading table with Donelle at the time of the incident (Michelle Stenzel; Tammy Parker; and Gary Meier), provided creditable and interesting insight for the commission; caused some minor inconsistencies in reconstructing the event; but their evidence provides little controlling relevance in resolving the issue before us and only very brief portions of their testimony are recorded below. Kollmorgen's only witness, Superintendent Warren Davison, supplied little germane to our disposition and his evidence is omitted.

(Facts)

Donelle Mahan:

Donelle, an attractive and articulate girl of about 14, was, on December 4, 1981, participating with three other junior high students in

Joan Kollmorgen's reading class held in a Northwest Webster library (approximately 6th or 7th period). At the inception of the period, vocabulary sheets were made available to the four and Kollmorgen, also the librarian, had proceeded to receive books. Testifying that she and the other three were seated at a rectangular table sorting through the papers, Donelle asserts that at the point she became aware of the instructor's presence she may (as was allowed) have been talking with Tammy but there was no remarkable activity at the table and she was behaving. At this time, according to the student, Kollmorgen, without warning, struck the top of Mahan's head with a book forcing the girl's chin downward. Describing the reading book roughly as 7" long and an inch thick, Donelle identified as immediate consequences of the impact: visual irregularities; headache; nausea; and a sense of shock. The girl states that subsequently she noted swelling at the site of trauma, approximately an area slightly to the left of the central uppermost region of the cranium. Donelle finished reading, contending Kollmorgen remained silent but "glared"; attended study hall as the next and last period; and returned home by bus approximately 3:45 p.m. All four students made nonspecific assertions as to Kollmorgen's mood that day.

Other Students:

Gary Meier testified that he did see the teacher approach and remembers seeing the impact of the book on Donelle but was rather vague as to surrounding details. Comparable to a later assertion by respondent from the witness chair, Gary stated that he understood the incident as one where the instructor was "just trying to get her attention." Tammy Parker testified that she actually observed the impact of book on head; she characterized the force and report as a "whack"; identified the cranial area involved by pointing to essentially the same region previously specified by Donelle; and concluded that "I knew Donelle was stunned." Michelle Stenzel also testified that she observed the incident, the contact being book to the top portion of the head. She asserted that while Donelle appeared stunned by the contact, the teacher did not forcibly bring the book down hard to the head but rather let the book fall from her hands.

Meridee Mahan:

Having been informed by her daughter of the incident and ongoing headache and nausea, complainant testified that she initially consulted with her attorney by phone who advised that the child be seen by a doctor. Subsequently and upon being unable to reach Kollmorgen, she called the superintendent of schools; informed him of Donelle's allegations of the book episode; and requested information for reaching the librarian. As reflected by Mahan exhibit "A", Donelle and mother arrived at Trinity Regional, Fort Dodge, at 5:08 p.m. (time, informal response, November 5, 1982; Mahan hearing testimony, 4:15 p.m.); recited a history for nursing personnel; and following

evaluation by a staff physician, Donelle was released with cold pack, ASA and frequent sleep interruption prescribed. From this point, the record provided no further information respecting progress and resolution of reported personal injury.

Complainant asserts that she reached Kollmorgen at about 10:00 p.m. and that the teacher, citing stress due to overwork, conceded book contact with Donelle's head. Mahan advances as the principal reason for the incident, the teacher's erroneous belief that Donelle was improperly looking at Tammy's paper. The record is without evidence to support such theory. Following December 4, 1981, Mrs. Mahan removed Donelle from attendance in the district.

Joan Kollmorgen:

Respondent, parent and an educator with Northwest Webster for several years, testified that the issue arose during her "right to read" program on the afternoon of December 4, 1981. Having made assignments for class and while in the process of receiving library books, Kollmorgen noted that Donelle and Tammy were distracted with things not related to the reading work and said she proceeded to the table area to redirect their efforts. Asserting that it was not her purpose to discipline the student but rather only to gain her attention, respondent said she reached over and tapped Donelle with a reading book, contacting the right inferior portion of the head near the temple. Kollmorgen also testified that she then told Donelle that she had her materials and the assignment and that she was to devote her efforts in that regard. The teacher said that this the student proceeded to do, completing and proffering the project at period's close. Affirming that she was knowledgeable and unambiguous as to the nature of contact and force related thereto, respondent denied consequential injury and vehemently insisted that no injury, such as asserted by the Mahans, occurred or could result from the contact at issue. Finally, the instructor testified that she could see that Donelle was surprised by the method of gaining her attention; that she observed nothing else remarkable about the child, except the student seemed mad and sometimes glared at her; and that Donelle went from reading to her activity (seemingly physical education). Without further elaboration, the record convincingly reflects that Mahan next attended study hall.

Findings of Fact

1. The commission finds and all parties concede that during the afternoon of December 4, 1981 Donelle Mahan was in attendance at respondent's Northwest Webster reading class, during the course of which Joan Kollmorgen intentionally and by design caused a reading book secured in her hands to come into contact with a portion of Mahan's head.

2. The commission also finds that the record contains substantial evidence supporting two diametrically opposing theories: a) contact resulted in cranial injury (contusion) causing discomfort and requiring medical attention, and b) contact de minimis; insufficient to injure.

3. It is further found that the force initiated by respondent and its consequential impact upon the person of Mahan, was not for the purpose of or intended as an exercise of the educator's privilege to physically discipline for errant conduct; nor was it for the purpose or with design to inflict bodily injury; but rather for the sole purpose of gaining the student's attention.

4. Additionally, we find nothing of record supporting any theory that the student, in fact or in law, consented to the bodily contact, though record shows Donelle regarded the intrusion as offensive.

5. Finally, in considering the conflicting proof as to injury (including parental priority of legal consultation and immediate efforts toward school personnel) and in passing on demeanor, deportment and appearances of the principal witnesses, we find respondent's description of contact and consequences more creditably approximates the factual situation.

Discussion

I

Forcible Bodily Intrusions

While the educator sincerely fails to sense any justice to a grievance faulting her action to gain student attention, the fact remains that serious issues ever attend a situation of bodily intrusion consequent upon the intentional use of force by an educator. Fearful that our disposition might hamper staff in daily school operations, Kollmorgen's counsel requested that we carefully articulate guidelines for the area. Noting that the general issue of force and punishment was extensively briefed in Crowley vs. Yoshimura, case 79-1,(4/12/79), we proceed here more specifically.

A

Intrusions upon personal security and bodily integrity and physical punishment by government¹, without due process, violates the "liberty interest" provision of the Fifth Amendment, U.S. Constution:

"While the contours of this historic liberty interest. . . have not been defined percisely, they always have been thought to encompass freedom from bodily restraint, and punishment . . . It is fundamental that a state cannot hold and punish an individual except in accordance with due process of law.

x x x

1. Actions by a public school district and by its officials and employees, on its behalf, are state or government acts within the Fifth and Fourteenth Amendments. See e.g., Ingraham vs. Wright, 430 U.S. 651, at 674 (1977).

"There is, of course, a de minimis level of imposition with which the Constitution is not concerned. But at least where school authorities acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, we hold that the Fourteenth Amendment liberty interests are implicated. "Ingraham vs. Wright, 430 U.S. 651, 672-674 (1977).

B

The constitutional proscription of governmental intrusion on personal security and bodily integrity, has been extended by legislation in every state to prohibit some such intrusions by any person, not just government. The applicable Iowa statute is considered below in Part II.

C

Not unique to a position in education, an educator may use reasonable force to defend and protect and is invested with the singular legal privilege to exercise corporal punishment in an appropriate case. Since, by Kollmorgen's concession, punishment is not involved, the doctrine is outlined but briefly in the margin.² (paragraph continued top of page 6)

2. See Crowley vs. Yoshimura, supra; Tinkham vs. Kole, 110 N.W.2d 258 (Iowa--1961). At commonlaw, an educator could impose reasonable but not excessive force to discipline a child. See, W. Prosser, Law of Torts, pp. 136-137 (4 ed., 1971). A noted authority of some antiquity held, as "absolute rights of individuals", the right to "security of corporal insults of menaces, assaults, beating, and wounding." 1 W. Blackstone, Commentaries. But he did not regard it a "corporal insult" for a teacher to inflict "moderate correction" and Blackstone viewed the use of necessary force as "justifiable or lawful." Id at 453; and 3 Blackstone at 120. From colonial times this practice has played a role in public education of school children in most parts of the country. The doctrine has remained essentially unchanged:

"The prevalent rule in this country today privileges such force as a teacher or administrator reasonably believes to be necessary for [the child's] proper control, training or education. Restatement (Second) of Torts, Sec. 145 (2) (1965) . . . "

"To the extent that the force is excessive or unreasonable, the educator in viturally all states is subject to possible civil and criminal liability." Ingraham vs. Wright, 430 U.S. 651, 661 (1977).

Striking a student on the head with objects is probably never privileged by the doctrine.

II

Nonprivileged Bodily Intrusions

Apart from issues of defense and corporal discipline, the intentional use of force against a nonconsenting student is fraught with potential questions of job security, professional sanction and statutory penalty. See McLaughlin vs. Machias Schools, 385 A.2d 53 (Me.--1978 termination upheld); Crowley vs. Yoshimura, *supra* (Section 272A.6 Professional reprimand); Chapter 708, Assaults, Code of Iowa. Code Section 708.1, in part, provides:

708.1 Assault defined

"A person commits an assault when, without justification, the person does any of the following:

"1. Any act which is . . .intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act."

The act proscribed need not include considerations of injury, it being sufficient that one intends to offensively touch. See State vs. Johnson, 291 N.W.2d 6 (Iowa--1980); cf. State vs. Sommer, 86 N.W.2d 115 (Iowa--1957). Provocation is no defense (State vs. Frommelt, 159 N.W.2d 532--Iowa--1968), and the slightest unauthorized touching adds the battery (Cole vs. Turner, 90 Eng. Rep. 958 (1704)--Lord Holt, C.J.--source of "least touching" dictum). Whether contact is offensive is determined by reference to the sensitivities of the one touched. Richmond vs. Fiske, 160 Mass. 34 (Mass--1893--plaintiff recovered where defendant touched him to wake him up to present milk bill); Edmisten vs. Dousette, 334 S.W.2d 746 (Mo. App.--1960--placing hand on female hips).

Decision

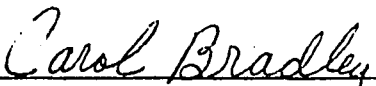
Mrs. Kollmorgen concededly struck Donelle about the head with a solid object, the force seemingly sufficient to produce something like a "whack". At the hearing, the teacher presented an appearance of being honestly puzzled that she should be faulted for the attention-getting device. It should be evident, however, from the protracted and time consuming aftermath that her method is at least suspect. However *de minimis* the impact, a bodily intrusion resulted and there is no reason to suppose that dignity was less affronted simply because the affected part belonged to a child (Tinker vs. Des Moines Schools, 393 U.S. 503 at 506 (1969)--rights not shed at school house door). While not relevant to considerations of force, we too are puzzled but as to why such attention process is ever thought necessary.

An educator, in interacting with charges, reposes in an uncommon posture in relation to intrusions of their person, solely because of the corporal punishment dogma. Assuming an appropriate case for discipline, that doctrine does not privilege the use of force about the head by hands or other objects. In the final analysis, if defense, corporal punishment or other privilege of force is inapplicable, bodily intrusions upon a nonconsenting charge pose a real risk of impacting assault and battery concepts, as for example Section 708.1 of the Code, supra.

Were a comparable factual situation presented following this case, there is strong likelihood of the necessary criteria involvement to warrant statutory sanctions. We are aware, however, that in relation to issues of student management many educators, like respondent, commonly believe that numerous kinds of nonprivileged bodily intrusions are permissible and are substituted in lieu of verbal directions. Though imprudent to hazard a definitive list, other examples might be pulling or yanking a head up by the hair or jabbing at the body with pencil or other such object. The uncomplicated point is, that apart from privileges to defend, protect, corporally punish and restrain, the use of other force against a nonconsenting student is suspect. In addition to the factor of misapprehension common to some professionals, we have found lacking here any mens rea, culpable intent or other than the use of minimal force. By our fact finding, we also discarded injury. Accordingly, a majority of the commission declined consideration of professional sanction under Section 272A.6 of the Code and acted to dismiss. Commissioners Marilyn Williams and William Stammerman dissent and their dissenting opinion, authored by Williams, is attached.

For the above reasons, the complaint and proceeding is dismissed.

Dated March 14, 1983



Carol Bradley, Ph.D.
Chairperson

IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION

 MERIDEE MAHAN
 COMPLAINANT

CASE 82-18

VS.

 JOAN KOLLMORGEN
 RESPONDENT

 HEARING DECISION
 DISSENT
Discussion

I would take action under Section 272A.6, Iowa Code, toward a reprimand and warning. For this reason I dissent.

Chapter 17A of the Code, designating the record and how it is used, demands that an agency deciding contested cases be sure a decision is responsive to the total record. I am aware that the contents of the medical records (Complainant's Exhibit "A"), were not admitted. But, the medical document was brought to the hearing and its authenticity was not questioned. It was clearly admissible and should have been admitted as a "business entry" or "business record" as an exception to the hearsay rule. The contents of the entry or record were presumed to be regular which should make them then reliable. This record, (Exhibit "A") can only be construed as showing that this child had an injury, and injury cannot be wished out of the record.

Aside from the content of the medical record, the record itself was admitted as evidence. That does indicate that for some reason the parent saw fit, after asking for legal advice, to take her child to a hospital to be checked medically. If the commission still does not choose to use the doctor's medical findings to substantiate an injury or to bring credibility to Mrs. Mahan's testimony regarding the injury, then how do they answer the following questions:

- a. Did the book make contact with Donelle's head?
- b. Why did Donelle say she was "stunned" after the book made contact with her head?
- c. After class, on the way to studyhall, why was there conversation suggesting that Donelle might, or should, go to the office for aspirin?
- d. What caused Mrs. Mahan to be so concerned or so angry that she contacted an attorney for advice and called the school to seek information from a school administrator?
- e. Why did Mrs. Mahan take Donelle to the hospital?
- f. Did Donelle lie when she described a bump on her head? What was Mrs. Mahan describing when she said that Donelle's skull had a mark with small red lines running out of the center?

- g. Why did Mrs. Mahan say that the hospital told her to have Donelle continue with an icepack, use aspirin for discomfort, and aroused every hour during the night?
- h. Later in the evening why did Mrs. Mahan call Mrs. Kollmorgen? Did she ask about Donelle's academic progress or did she call to get information about something else? In fact, didn't she ask Mrs. Kollmorgen why she had hit Donelle on the head with a book?

The record substantiates the content of these questions. Answering these questions would seem to indicate that something did occur that caused Donelle discomfort, and in fact, an injury.

I feel it's very important that the commission not put themselves in a position that condones a situation where an educator uses force that may result with injury to a student. The commission's majority decision to dismiss this case does not give merit to the fact that there was an injury. Does a dismissal indicate to Mrs. Kollmorgen and our Profession that an inanimate object may be used to get a student's attention, if not used in anger or with no intent to harm that student?

I am convinced that there is strong evidence that substantiates an injury and I believe that the commission has been remiss in failing to address that injury and Mrs. Kollmorgen's responsibility regarding such. In conclusion, I would recommend a reprimand and warning, and for that reason I dissent. Commissioner William Stammerman concurs in this dissent.

Dated March 9, 1983

Marilyn Williams
Marilyn Williams
Commissioner
(D.R.B.)

education require a showing acceptable to the board, wherein creditable professional testimony (involved psychiatrist, psychologist, sexual counselor, etc.) substantially assures the problem will not likely recur.

2. That Hawkins not be permitted any efforts to establish eligibility to practice education until at least that point of time when he has successfully completed his court imposed period of probation and been released therefrom.
3. Respondent's aberrant behavior, at least here, manifests an attachment to the very young. In any future effort to establish eligibility to practice the board might consider the desirability of a restriction to teach only upper level--e.g., 10, 11, 12, 13, and 14.

In conclusion, the commission will seek the indefinite suspension of respondent's teaching certificate

Dated March 26, 1982



Jo Ann Burgess,
Chairman, IPTPC

APPENDIX K. IPTPC HEARING RECORD 76-5

PRACTICES COMMISSION

Dorothy Beatty, Et.
Al.,

Case No. 76-5

Complainants,

vs.

Hearing Decision

Harvey Chauvin,
Superintendent,
Shellsburg Community
School District,

Respondent

I

JURISDICTION

This is a proceeding brought by an interested parent of the Shellsburg School District and the Shellsburg Educational Association, both of whom have legal standing. (Rule 640-2.4, Professional Teaching - Iowa Administrative Code, Vol. II.)¹ The respondent holds an Iowa teaching certificate, No. 180368, and this action seeks to revoke that certificate as the result of an alleged series of unprofessional acts, practices and omissions. Moreover, evidence was adduced at the hearing to show alleged unprofessionalism. Accordingly, the Commission has jurisdiction over the subject matter and the parties. (Sections 272A.2 and .6, Iowa Code, 1975). There are one or two charges within the proceeding over which jurisdiction is lacking. They will be noted in the section under "Excluded Claims."

II

PLEADINGS AND PROCEDURES

A. Pleadings: The original complaint, composed of some thirty-eight charges, was filed on or about July 19, 1976. The allegations generally cover a time period equal to the 1975-76 school year. In the fall of 1976 the complaining parties moved to amend and filed an amendment to the complaint composed of some nine additional charges. On October 19, 1976, leave to amend was granted. In October of 1976, Mr. Douglas Cairns, counsel

¹. Hereinafter all Commission Rules will be cited by Rule alone, with the understanding that the formal source is the Administrative Code.

for the respondent, filed informal responsive materials covering all charges, including those of the amended complaint. Respondent's formal answer was entered on December 29, 1976. On November 17, 1976, complainant's attorney, Ted Ruffin of Cedar Rapids, noted an appearance. The hearing began on February 3, 1977, during the course of which Mr. Ruffin moved and was permitted to amend the complaint in minor particulars (Rule 640-2.9 (6)).

B. Motions to Dismiss-Disqualify

(1) Respondent's October 25, 1976, motion to dismiss predicated on jurisdictional grounds, alleging commission failure to follow its own rules regarding informal settlement efforts (Rule 640-2.3) and relating to investigations of complaints (Rule 640-2.5). Motion overruled October 27, 1976, on the grounds that informal settlement possibilities were explored and a sufficient investigation conducted.

(2) Respondent's November 29, 1976, motion to dismiss or to strike or for more specific statement. Motion based on jurisdictional grounds, contending commission rules, on which complaint is based, are constitutionally void for vagueness. The motion also attempts to remove charges on the grounds that they are too vague, insufficient or beyond commission jurisdiction. Motion overruled December 17, 1976, on the theory that the Commission resolved the "vagueness" issue when it adopted the rules and it is no longer open in commission proceedings. The commission also noted that at the October 1976 meeting a ruling issued that all charges would come before the commission at the hearing, reserving the right of exclusion on proper legal objection.

(3) Respondent's January 20, 1977, motion to disqualify commission members belonging to ISEA. Motion overruled February 3, 1977, in that the doctrine of "membership prejudice per se" is precluded by (a) prior commission resolution of the issue, (b) legislative intent in enactment of Chapter 272A of the Iowa Code and (c) analogy to disbarment cases in which judges (members of ISBA) pass upon charges advanced by ISBA.

III

EXCLUDED CLAIMS

Subsequent to the filing of the complaint and its amendment, numerous charges have been withdrawn either upon stipulation of the parties, by Mr. Ruffin at the hearing or by the commission on its own motion. The following list of excluded claims will have no consideration in the subsequent "fact findings," "conclusions" or "decision.":

A. Claims excluded by Stipulation or Withdrawn by Complainants

(1) Virginia Davison - Ex-district secretary. Her charge covered such things as the "hot lunch program," the "case of soup" problem, moving her things to the "furnace room," firing her and the "workmans compensation" issue.

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- (2) Jane Harmon - Teacher. The "senior prom" issue.
 - (3) Rose Ann McNamee and Betty Husted - Teachers. The state chemical forms and carcinogenic study issue.
 - (4) Ron Deppe and Larry Shay - Counselor and Principal. The "Travelog and film slide" problem.
 - (5) Theodore Carter - Citizen. Problem concerning resignation of numerous teachers.
 - (6) Karmelita Webert - Teacher. The career education grant issue.
 - (7) Lyla Hoon - Cook. The "dirty kitchen" issue.
 - (8) Betty Husted - Teacher. The Coleen Hagerman early teaching contract problem. Board action - no jurisdiction.
 - (9) Linda Vavricek - Teacher. Problem of publishing teacher's resignation. Note same issue on Jane Harmon was not withdrawn.
 - (10) Larry Shay - Principal. The piano problem.
 - (11) Sharon Crisman - Teacher. Conversation with a board member about "lock change."
 - (12) Dorothy Beatty - Party. Problem of posters and other materials warning children not to take candy, rides and so on.

B. Claims Excluded by Commission

- (1) Shirley Happel - Teacher. Amended complaint - alleged school board order that she lunch early in order to be in library over noon hour. No evidence to show this not done by board. Hence, no commission jurisdiction.
- (2) Larry Shay - Principal. Three separate charges involving alleged "contracts" with persons doing business with school when Chauvin arrived. The allegedly wrongful action regarding these transactions is not covered by commission rules and is not within its jurisdiction.
- (3) Lysabeth Wilson - Happel - Mohammed Ali - "chocolate" issue. At the close of complainant's case the issue of practicing racism is entirely too insubstantial to warrant consideration.
- (4) Ron Deppe - Counselor - The Amana "drinks" issue. The issue of whether Chauvin caused the district to pay for the drinks could not be established by Deppe or others at the hearing. For this purpose the complaint itself relies alone on Virginia Davison who was excluded by Mr. Ruffin at the hearing.

(5) Jane Harmon - Teacher. Publication of resignation. As a matter of law once the document was delivered to the school board it became a public record, in which a right to privacy no longer existed. Moreover, in this case no evil or malicious motive as to publication was alleged or shown.

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(6) Oliver Schminke - Citizen. About the T.V. statement - "Teachers only want money." This potential witness did not come to hearing.

(7) Shirley Happel - Librarian. Amended complaint - further about M. Ali's book. Happel testified to other earlier events about Ali but there was no testimony on this alleged September 10, 1975, conversation with Chauvin. Accordingly, the charge is out.

(8) Betty Husted - Teacher. Amended complaint charge about two teachers being denied a "preparation" period. No testimony on this issue at hearing.

(9) Ethel Robbins - Teacher. Amended complaint charge in part alleging intimidation, improper use of teacher aids and so on. Did not participate at hearing and charge is out.

(10) Betty Husted and K. Webert - Teachers. Amended complaint charge on denying books to students where unpaid. No testimony on this issue.

(11) Grant Wood, field trips and Music and Drama Department's issues out.

IV

STATEMENT OF THE FACTS

This proceeding attempts to show that, in connection with his duties as superintendent of Shellsburg Schools for the last seventeen months, the respondent engaged in a course of conduct and committed a series of acts and practices, all of which were unprofessional and in violation of this commission's rules. The purpose here is to relate some of the facts and evidence as bearing on this issue. It will be noted, however, that the effort is largely neutral and the issue of creditability or veracity of a witness is not considered. These items are important to the ultimate task of deciding this case and they are reflected in the decision.

A. Complainant's Case

(1) Alleged conduct toward and treatment of teachers, staff, parents and citizens of school district

The record contains some evidence of episodes of anxious shouting, yelling and cursing at an individual or groups of persons within the district. Thus, principal Larry Shay stated that at the first of the 1975 school year things were going well until an October staff meeting when Mr. Chauvin went into a long rage, during the course

of which he pounded his fist, swore, humiliated the teachers and in substance said:

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"That the rooms and parts of the building were like a 'pigpen.' That there were other persons who would like their jobs."

Shay said this lasted forty-five minutes; that he remembers "damn" and "hell"; and that the teachers were shocked and some were crying. This episode was generally acknowledged by the following witnesses: Betty Husted, teacher (noted yelling about "pigpen" and others could get the jobs); Jane Harmon, teacher (called "pigs" - said if don't like teaching get out); Karmelita Webert and Bernice Thompson, teachers (both noted this incident in their testimony). Testimony as to another such incident comes from the school janitor, Mr. Hopper. He notes that Mr. Chauvin (probably in early 1976) engaged him in an argument in the school hallway, at which time he (Chauvin) became upset, yelled and used profanity. The janitor testified that the loud angry words could be heard throughout the building. Lenore Burry, teacher, testified she and her children heard the altercation through a closed door; that the swearing consisted of at least "damn" and "hell"; and the students became sufficiently distracted so that it took some time to settle them down. Bernice Thompson also notes this incident.

Evidence further reflects school board meetings at which angry shouting encounters allegedly occurred. John Tremain, present board member, testified that at a 1976 meeting Mr. Chauvin became very exercised, pointed a finger at him and, in an angry voice, accused him of sending men to Missouri to investigate his past. Chauvin's face was characterized as "flushed" and his composure as very "agitated." Dorothy Beatty, a complaining party, stated she was present at the Tremain episode and that at another point during the meeting the superintendent "turned on her and yelled at her," seemingly charging her with agitation and trouble. At yet another meeting Bernice Thompson says Chauvin in a loud voice branded her a "trouble maker" (a fact also related by Betty Husted). Further record citations to such angry behavior or allegedly demeaning remarks is noted in the margin.²

Apart from the allegedly overt behavior and conduct, a number of complaining witnesses argue that a series of memoranda or other documents were offensive and humiliating. With respect to the documents it is sometimes conceded that the subject matter is proper but that the language used or means to be employed constitutes the offensiveness. E.g., Ron Deppe testified that he received a written memo which in effect advised him (and others) that if he did not get a copy of his transcript and certificate to the office he would not be paid and he would be terminated. He said he recognized an obligation to provide these documents but was entirely turned off by the threatening methods. The Chauvin memo reads in part as follows:

2. Larry Shay (Chauvin had yelled and swore at him in private - He was rational at first but by November often nervous and irrational); Ron Deppe (at one meeting started with low voice but went "up and up until shouting"); Larry Shay (superintendent called the board members, in effect, "dumb" and said he must educate them - Also made demeaning remark about local citizens drinking, no T.V., no books in home and so on); Robert Gonzales (Chauvin said "I don't care about this damn school" - I only intend to be here a short time).

"TO: All Teachers
"FROM: Superintendent

"This is to advise you that at the start of the school year I requested several things (certification documents). At this point I am advising you again--failure to comply will mean NO PAYMENT COME NOV. 29 and after that I will list your position as vacant."

There is considerable testimony on the lounge closing memo. In this regard, several Shellsburg educators agree there was some abuse of the lounge privilege and duplicating machine. They complain, however, of "high handed and arbitrary methods" in punishing everyone instead of the few responsible. For examples of lounge closing assertions see the testimony of Bernice Thompson (Chauvin told her it was closed by board - a board member told her he knew nothing about it); Sharon Crisman (talked to board member who knew nothing of board action on lounge); Larry Shay (said this memo and other action causing unrest and low morale). Complaint is also made of page 16, Teacher's handbook, paragraph 17, which reads:

"After board review, I would like to propose the following Board Policy:

"That all women employees will vacate all classrooms or offices by 4:30 p.m. and that all women employees will not be allowed admittance to the building on week-ends or holidays."

x x x

"If a woman has an important undertaking or work at these times, she will inform the Superintendent who will make arrangements for her to enter the building at these times.

Finally, there is the directive which advises that teachers are not to gossip in the hallways during school hours, with the enjoinder that such conduct could be "devastating." Among other things, some complaining witnesses contend that not only is the memo threatening but also an infringement on constitutional rights of expression.

Finally, there is some evidence that this alleged conduct and treatment was the reason for several teachers resigning during the 1975-76 school year. Of the fifteen teachers who resigned, the following testified that Mr. Chauvin's conduct had a significant role: Bernice Thompson, Jane Harmon,³ and Robert Gonzales. Mrs. Beatty testified that she was told by several of the others that they resigned as the result of Chauvin's conduct.

3. Harmon also makes much of the fact that she needed textbooks for a new course and when she pressed Mr. Chauvin for them he told her to "copy her book page for page for the course."

(2) Evaluation and Letters of Consideration Problem

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While the record is not clear nor free from confusion on the issue, several complaining witnesses contend that Mr. Chauvin filed distorted evaluation documents often without ever being present to observe the teacher and that, in a few cases, he used such evaluations in an effort to terminate the teacher. Thus, Mr. Gonzales states that Chauvin gave him a highly excellent evaluation when in fact he had never been in his room. In a like manner, Betty Husted testified she had no memory of the superintendent being in her room and yet he came forth with a very good evaluation. Larry Shay testified that to his knowledge Chauvin's evaluations of Gonzales, Deppe and Sharon Crisman were prepared without any physical observations in the classroom. Evaluations by Chauvin (and Shay) played a role in administrative efforts to terminate five teachers in 1976, including Crisman, Deepe and Lenore Burry. Deppe was evaluated by Mr. Shay in March, 1976, and, as reflected by Exhibit "7", received an excellent rating in most areas. About two weeks later Deppe received a generally unsatisfactory report from the respondent (see Exhibit "6"). Though the Chauvin evaluation was used to support termination the board offered Deppe a new contract. He testified that Chauvin prepared the bad report because he refused to resign when requested to do so and because of "bad blood" between them.⁴

Exhibit "5" dated March 15, 1976, is an evaluation report by Larry Shay on Sharon Crisman. It is generally favorable with only one "N". The report contains some longhand comment at the bottom of two pages which Shay identifies as his notes. An example follows:

"I feel a definite need to return to college for some work - perhaps a new 'methods' course."

Shay stated that these comments added to the form were in keeping with his practice of making constructive criticisms and were in no way intended for use as reasons for consideration of termination. These comments, nevertheless, showed up as part of the reasons seemingly advanced by Chauvin for Crisman's dismissal (see Exhibit "4", an unsigned and undated evaluation report entered in evidence as prepared by Chauvin, and Crisman's affidavit in the complaint quoting part of her letter for consideration of termination). Shay also testified that he was ordered by the respondent and an active board member to prepare reasons sufficient to terminate Mrs. Crisman and another teacher (probably L. Burry). He said he really had no sufficient reason but was coerced to provide some grounds.

4. In earlier testimony, Deppe said when teacher morale became very low because of Chauvin he went to the superintendent to discuss the matter; that he was ignored; that he then went to the board but was in effect told not to concern himself; and that as a result of this action Chauvin was hostile toward him.

Mrs. Crisman also points out that while the Chauvin evaluation form rated her "satisfactory" on the items in the margin,⁵ these very items were listed as reasons why she should be terminated (see Exhibit "4" and Crisman's affidavit). She concluded that despite these efforts the board awarded her a new contract. Mrs. Burry, who also complained that Chauvin was not in her room to observe her, was likewise given a new contract following a hearing on her notice to terminate (see Exhibit "B"). Finally, Shay said at the time of the hearings on these individuals he advised the board on his constructive criticism comments but that he in no manner recommended that any of these persons be terminated. The issue of "distorted evaluations" is much more complicated than presented here. In view of the Commission's findings below, however, further facts are unnecessary.

(3) Alleged Misappropriation of School District Property or Funds

Several of the complaining witnesses contend that the superintendent used his official position to obtain property for his personal use at the expense of school district funds. The items in question are a chain saw, some lumber, a battery⁶ and plugs and muffler. Robert Gonzales, industrial arts instructor, testified that on two separate occasions Mr. Chauvin directed him to purchase items along with the shop supplies--the first being a chain saw which he bought at Sears and the second being two pieces of lumber. Gonzales said that neither item was for shop use but both for the respondent's personal use. Both items were obtained on invoices showing them as school district purchases and were free of taxes. Mr. Keith Jenson, a Uniserv official serving the district, testified that he investigated the complaint. He said that among the records of purchase inspected at the school he observed a tax free invoice for the chain saw which was paid for by the district. In this regard, responsive materials filed by the respondent admits use of the saw and lumber.

5. Compare the following evaluation ratings with paragraphs three and four of letter of consideration (Exhibit "A"):

"Teaching Evaluations.

"6. Subject matter: Manifests knowledge of subject matter and objectives. "S"

"10. Equipment: Uses effectively supplementary teaching aids and varied instructional materials". (Rating "S" is satisfactory). "S"

6. As noted under division II above, the "case of soup" and the Amana "drinks" issues have been excluded from this case.

The record contains much evidence by citizen Carter regarding discovery of a battery in Chauvin's car purchased by the school district in December of 1975. As complainant's Exhibit "8" reflects, the respondent admits the purchase and use of this item but contends that Larry O'Brian (mentioned in Exhibit "8") mistakenly caused the battery to be charged by the Vinton Motor Supply to the school district. Chauvin contends that it was O'Brian's error which caused him not to pay for this item until several months later. Exhibit "8" contains a copy of Invoice 34797 relating to the battery showing a list price of \$48.85 but a price to "Shellsburg Schools" of \$35.85. The exhibit also shows on August 15, 1976, a check by Mr. Chauvin payable to the district in the sum of \$35.85. The respondent points out that he did not learn of the obligation for his car battery until shortly before this check and the discount realized (\$35.85 vs. \$48.85) was O'Brian's not the school's. The complainants, however, note the payment did not happen until after this complaint was filed. Exhibit "8" and testimony of record reflects a very similar problem as to spark plugs and a muffler purchased from Vinton Motor Supply on April 21, 1976, and used by Chauvin. The district originally paid the sum of \$23.15 (list price \$33.21) and a Chauvin check in the amount was given to the district in August of 1976 after the commencement of this proceeding.

(4) Miscellaneous-Budget problems - Janitor overtime and School Board Secretary problems.

There was testimony by several witnesses that the teachers could not get budget information or that they were promised such but it was not forthcoming. Thus, Larry Shay stated it had become a real problem--they needed budget figures but Mr. Chauvin simply would not tell them where they were on the budget. Mrs. Happel, the librarian, was one witness who complained of budget problems. According to her she had been put off for two years on requested books and needed library work. She admitted one list of books did come but left the view that she had problems seeing Chauvin on the fiscal situation. Mr. Gonzales made general remarks about a lack of knowledge on budget and Jane Harmon said she was told to set up a new Home Economics course but later told by Chauvin that the budget would not allow her to buy the books. There is further evidence of alleged budget problems but these few facts will suffice.

Larry Shay testified that Beverly White, school board secretary, had done work for the superintendent on occasion even though a board member has pointed out that a board secretary cannot legally work for the superintendent. Complainant's Exhibit "11" is seemingly a sample of work done by Mrs. White for Chauvin.

Finally Mr. Hopper, School Janitor, claims that at the request and approval of Mr. Chauvin he and his spouse worked extra hours in connection with four basketball games. He

states the bill was presented to Mr. Chauvin through Shay but despite his earlier assurances the bill has not been paid.

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B. Respondent's Case

In reviewing the evidence for the respondent the above format will be followed. In view of the subsequent "findings" and "decision" only the more significant facts will be noted. To illustrate, the "chain saw" and "lumber" warrant no further attention since prior board authorization has been shown. Other items, e.g., budget, library, board secretary and janitor overtime, while in the case will not receive undue attention.

In addition to Mr. Chauvin, Mr. Shay, Mr. O'Brian and two Grant Wood witnesses, the following 1975-76 Shellsburg school board members appeared on behalf of the respondent: John Rhinehart, JoAnn Blattler, John Deklotz and Arnold Charlier. The board members generally acknowledged that prior to the 1975-76 term the district was having serious administrative and student discipline problems; that Mr. Chauvin was informed about these matters; and that he was to proceed as a firm administrator and disciplinarian in order to solve these problems. Testifying to the renewal in 1976 of Chauvin's contract, the four board members generally held him to be a good superintendent. Though their collective testimony lends an impression that the board had little awareness of serious problems between Chauvin and his staff, the contrary is suggested by examples set forth in the margin.⁷

(1) Alleged conduct toward and treatment of teachers, staff, parents and citizens of district.

With respect to the October 1975 staff meeting, Mr. Chauvin testified that he did complain strongly of the messy condition of the school building and likely referred to areas as "piggpens." He denied that he was in a "rage" of shouting and swearing. Furthermore, he denies all other alleged encounters at which he was said to have been in a rage, yelling, swearing and otherwise emotionally upset. He said that the complaining witnesses who so testified had lied. Branding him a "living argument," Chauvin concedes numerous "loud" altercations with Mr. Hopper, though he denies the one in issue was in the hallway or that he swore at the janitor.

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7. Rhinehart said Ron Deppe and other teachers came to a December 1975 board meeting with complaints of morale and Chauvin and was told in effect "your job is to counsel students, not teachers." Deklotz testified that during a phone conversation with teacher Louis about "many problems" he tried to get the teachers to come to the full board. Charlier said Mrs. Ashby told him that at first Chauvin and Ashby were friends but now "things have changed - keep your eyes and ears open." Finally, though the board members can give no specific firsthand reasons for the April 1976 mass resignations, Charlier testified that he felt it was a power play by the teachers to force Chauvin's resignation (to reach this conclusion Charlier supposes conflict).

Past board member Charlier, however, testified that he was present at the Tremain episode and was concerned that the respondent came across noticeably upset, loud and with some swearing. In response to the Charlier assertion Chauvin conceded that he may have been emotional and loud but not in a rage. Charlier appeared at the hearing as a witness for the respondent. Insisting on the right of free public expression, Mr. Chauvin described a local television appearance wherein he criticized some teachers for a lack of loyalty and for being in the profession only for money.⁸ Chauvin said the day he did the interview was a bad day (e.g., ten resignations) and in retrospect it may have been a mistake.

Respecting the document proposing female exclusion from the school building, the respondent asserts that it was motivated in part by an article disclosing a \$20,000 judgment against a Washington, D.C. college due to a rape of a student in a college building (see Exhibit "G"). He said that when the proposal was considered he advised the board of a potential discrimination issue. With regard to the lounge closing memo and the locking of the lounge, Mr. Chauvin testified that there were numerous problems, including students in the lounge, teachers not getting to the rooms or hallway assignments on time and the lounge being always in a messy and unsanitary condition. He said he made efforts through Mr. Shay to correct the problem but without success. The problem was discussed with the board on two or three occasions and they finally concluded that if the problem could be solved by locking the lounge then it should be locked. The respondent conceded that not all teachers were to blame (he estimates 8 of 24) but contends the lounge was a privilege which he could revoke. Board members acknowledged that they advised him to lock it if he felt such was necessary.

As to the "no transcript - no pay and no job" memo, Chauvin said that only Ron Deppe was really affected; that he had expended efforts on prior occasions to obtain these documents; and that in his opinion the memo merely stated what the law already required - e.g., no pay and no right to teach without proof of teaching certification. Regarding that portion of the teachers' handbook which says that gossiping in the hallways could produce "devastating" effects, the respondent claims the complaining parties are too hypercritical and distort the proper meaning of the word "devastating" in the sentence. He testified that he revised this existing handbook after coming to Shellsburg and that he took this language to mean that inattention to hallway duties, such as gossiping, could permit unsupervised students

8. Mr. Chauvin is sometimes inconsistent in the application of the right of free expression. Thus, he was highly critical of Ron Deppe for his public dissent of the Chauvin administration.

to cause personal or property damage which could be "devastating." (See Exhibit "I"). Mr. Chauvin's response to some other alleged incidents are reproduced in the margin.⁹

(2) Evaluations and Letters of Consideration

The respondent generally denied the charge that he had not been in the rooms of those he had evaluated. He asserts that he visited most of the teachers in issue on at least one occasion and in some cases as many as eight times, sometimes staying an entire morning. He seems to indicate that Mrs. Husted, science teacher, was an exception, in that her fourteen years of practice has been highly competent and it is possible to evaluate her by following class projects and observing end results. This reduces the time necessary for actual observation. Moreover, he testified that his evaluations also consider items apart from classroom observations - e.g., a teacher's attitude, the way one dresses, the way one carries oneself and the like.

As to the allegedly distorted evaluation of Gonzales, he said the excellent rating was appropriate. He spent a considerable amount of time early in the year in the shop and observed that Gonzales had an exceptional ability in dealing with the problems of an inadequate shop and in working with the students. It is relevant to note that Mr. Shay also rates Gonzales excellent as a beginning industrial arts teacher.

Conceding a wide variance between his and Shay's views on Ron Deppe, Chauvin stood firm on the validity of the ratings and comments found in Exhibit "6". He said Deppe caused numerous problems in failing to carry out assignments and because of insubordination. He asserted that he talked to Shay and told him to learn if Deppe wanted to go to Urbana full time and, if so, he should resign. If Deppe wanted to stay at Shellsburg full time an attempt would be made to work out differences through the board. Deppe did receive a letter of consideration but actual termination proceedings involving the board did not materialize due to Deppe's employment elsewhere.

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9. Respecting the complaint that he was not available at weekly staff meetings, the respondent notes that it was important to attend administrative workshops on that day at Grant Wood AEA and Mr. Shay was to represent him. With regard to his alleged social-economic criticism of the community, he asserted that he told his staff that some students were in a home situation where they had little to eat and were poorly dressed and that he wanted these students to receive special attention. As to Jane Harmon's charge about copying an entire text for a new course, Chauvin says that is not accurate - "I told her that instead of a text which we couldn't afford to use journal articles and copy these for the number enrolled - to copy a text would violate copyright law."

The remaining evaluations in issue involve Lenora Burry and Sharon Crisman. The record reflects evaluation reports by Chauvin and Shay on each (Exhibits "K", "L", "5" and "6"). Overall, the two reports on Crisman are not too different, with Chauvin seemingly adopting Shay's longhand "constructive criticism notes." There is a greater variance with Burry (compare Exhibits "K" and "L") but both evaluators noted numerous areas needing improvement. Moreover, at the hearing Shay was not entirely free of criticism as to her effectiveness during the period in issue. It will be recalled that both Burry and Crisman receives letters of consideration which they claim resulted from Chauvin's distorted evaluations and his efforts to fire them. The testifying board members all state, however, that those letters were based on observations proffered not by Chauvin but by Shay. They asserted that at a board meeting following the March 1976 evaluations, Shay gave a detailed review of many teachers and that as to his comments about Burry, Crisman and others. The board construed those comments as raising an issue as to possible termination.¹⁰ They wanted Shay's support in termination proceedings and since he claimed to have lost his materials that is why the board did not proceed further and offered new contracts. Both Mr. Rhinehart and Chauvin deny that they called Shay into the office and ordered (forced) him to write up reasons to terminate the above teachers.

(3) Alleged Misappropriation of District Property or Funds

The respondent, testified that after Larry O'Brien obtained the battery he notified Beverly White of the outstanding purchase on the district's account.¹¹ He said he had established an "offset" system with the office whereby purchases by him on the district account would, when the invoice arrived, be deducted from the mileage allowance due him from the district. He said the offset procedure was used with respect to the spark plugs and muffler purchase but not with regard to the prior battery transaction (in fact

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10. Most board members state that Shay recommended letters of consideration for termination, but when pressed conceded he did not expressly so state but that his comments were framed in that spirit. Shay denies an express recommendation but is somewhat equivocal as to whether his comments might have been so construed.
11. Beverly White, school board secretary, did not appear as a witness to testify regarding the battery, spark plugs and muffler transactions.

the record is not clear as to the date of the offset procedure - a statement signed by Beverly White on 2/21/77 contains a strong inference that no firm setoff policy was recognized by her in late April 1976).¹² The respondent noted that he checked more than once with the office about the battery purchase and in time forgot it. Board members approached him in the summer

(con't. on next page)

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12. At the Commission's request for district documents showing a setoff on the plugs and muffler purchase Mrs. White supplied materials tending to show a June 8, 1976 offset. Her statement reads in part:

"When I noted the bill from Vinton Motors (No. 45577 - plugs and muffler - 4-21-76) had a charge ... to Chauvin, I asked if he wanted to give me a personal check ... He said no 'I have some mileage coming and just take it out of that.'"

and directed him not to use the offset procedure or the district account to buy personal items. A personal check was then written to the "Shellsburg Community School District" as reimbursement for payment of the battery. While the school board members testifying did not approve of these transactions on sound auditing basis, none expressed a belief that Chauvin was guilty of misappropriation.

(4) Miscellaneous - Budget - Library - Janitor Overtime - School Board Secretary

Respondent testified to numerous efforts to improve the Library in 1975 (see Exhibits "M", "N" and "O"). He said budget limitations and a pressing need for more classrooms made it necessary to set aside plans for the library and study halls. New books for the library were also detailed. He also reviewed the 1975-76 budget (see Exhibits "R", "S" and "T") and Exhibit "Q" is a memo dated September 10, 1975, which attempts to inform his staff as to the state of that budget. There is testimony that from time to time he visited a teacher about individual budget needs, as for example Miss Harmon when he told her the budget contained no funds for the new text.

Mr. Chauvin stated that Mr. Hopper was authorized to work the first basketball games but had no such authority for the latter ones. Without such authority the board has enjoined him not to pay. The respondent said he did not observe him performing unauthorized work. As to the board secretary, he concedes he used Mrs. White's services but always in relation to board projects and responsibilities.

V

FINDINGS OF FACT

1. The commission finds that on more than one occasion in 1975-76 the respondent, in the presence of Shellsburg school staff or citizens, behaved in an emotionally angry, loud, threatening and offensive manner (one such occasion being illustrated by an October meeting at which the entire staff was harangued about "pigpen" conditions and the availability of others for their jobs).
2. It is further found that on more than one occasion during the 1975-76 term the respondent publicly criticized Shellsburg teachers, stating, among other things, that some lacked good faith and were in the profession only for money.
3. It is also found that the respondent had attitudes, ideas and values which would likely produce and did cause conflict and discord, as for example the proposed policy to exclude female staff from school property and to evaluate teachers on

such things as "dress" and how they "carry themselves".

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4. It is additionally found that of the numerous resignations proffered in April of 1976, some were motivated in part by conduct and situations such as those found in paragraphs one (1) through three (3) immediately above.
5. The commission finds that a majority thereof does not agree that there is sufficient creditable evidence to show that the respondent negligently or wrongfully distorted evaluation reports or that he took malicious and improper action to terminate several teachers. Nothing in this finding, however, is to be construed as a professional sanction by the commission of the evaluation process used in Shellsburg in 1975-1976.
6. It is further found by a majority of the commission that there is insufficient creditable evidence to prove that the respondent wrongfully appropriated Shellsburg school district property or funds to his own use (battery-spark plugs-and muffler). It is, however, found that the purchase of automobile parts through the school district account permitted a discount price and an unauthorized tax exemption all of which constitute a monetary private gain by reasons of official capacity with the school district.
7. The commission finally finds that as to the budget, library, janitor overtime, board secretary and like issues the evidence either does not support the allegedly wrongful practice (e.g., janitor overtime) or the evidence is at the most cumulative and adds nothing of substance to the effect of our findings in the paragraphs immediately above.

VI

CONCLUSIONS OF LAW

1. The practices found in paragraphs one and two of the fact findings conflict with the following commission criteria:

Rule 640 - 3.3(3) "... He or she (educator) ... exerts every effort ... to promote a climate in which the exercise of professional judgment is encouraged and to achieve conditions which attract persons worthy of trust to careers in education."

Rule 640 - 3.3(3) b "In fulfilling his obligation to the profession, the educator: b. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities."

Rule 640 - 3.2(1) c "Within any local system competence involves program building directed toward three important educational function: ... (2) to provide an effective environment for developing the skills and attitudes needed for effective citizenship ..."

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Rule 640 - 3.2 (1) d "The individuals effectiveness as a member of the profession calls for competence in three general areas of professional behavior: (1) personal relations, (2) professional growth, and (3) effectiveness in dealing with problems of the profession.

Rule 3.3 (1) d "Shall conduct professional business in such a way that he or she does not expose the students to unnecessary embarrassment ..."

2. The practices found in paragraph three of the fact findings conflict with the following criteria:

Rules 3.3 (3), 3.3 (3) b and 3.2 (1) d as quoted immediately above.

Rule 3.3 (2) c "Shall not interfere with a colleague's exercise ... of citizenship rights and responsibilities."

3. The practice found in the second part of paragraph six of the fact findings conflicts with the following commission criteria.

Rule 3.3 (2) d "Shall not use institutional privileges for monetary private gain ..."

Rule 3.3 (1) a "The commission recognizes the need for all members of the profession to be cognizant of the statutes of the state of Iowa which deal with contractual and other legal obligations (which includes the payment of taxes unless exempt by law)."

VII

DECISION

After six days of receiving evidence one thing emerges with clarity - at some point in the 1975-1976 school year strife and discord gained a firm foothold and grew at Shellsburg until the school district became unhealthy in all its vital parts. The matter is sufficiently complex and enough confused that it is difficult to assign or apportion blame for the onset of the problem or the failure to check its spread. While it is beyond our jurisdictional function, we incline to the gratuitous dicta that culpability extends not only to the respondent but also to the board and several educators of Shellsburg. In the instant case, however,

the task is to pass upon the blame of the respondent -
i.e., to determine if, as charged, he has engaged in one
or more practices which we hold to be unprofessional.

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At the outset, we will say that certain things have
been done with which we don't strictly agree but which
play no part in our decision (e.g., adequacy of budget
data, use of school board secretary, and publication of
resignations). And, though Mr. Hopper lacked authority
to work the latter games we reflect out loud as to how
it appears for a district and its superintendent to have
the benefit of the fruits of that labor (what courts call
"unjust enrichment") for free.

The more serious issues are, however, those set forth
in the above fact findings and conclusions. As noted
five paragraphs of the findings set forth practices that
either violate the letter or the spirit of several of our
rules. The commission finds that these practices either
alone or in combination were unprofessional. A majority of
the commission voted to issue a reprimand in accordance with
Section 272A.6 of the 1975 Code of Iowa.¹³

REPRIMAND

TO: Mr. Harvey Chauvin

In accordance with Section 272A.6 of the 1975 Code of
Iowa and in keeping with the findings and conclusions of
this decision, you are hereby issued a professional
reprimand by this commission. We have found that you
engaged in a number of practices that were unprofessional
and which were partially responsible for the dismal
situation that developed at Shellsburg and resulted in this
proceeding. In addition to any publication of this reprimand
a copy will be included in your certification file.

Dated March 15, 1977



Darold Faulkner, Chairman
Iowa Professional Teaching
Practices Commission

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13. Commissioner James Knott dissented and requested that the dissent
be noted in the decision with the comment that he would have supported
action to remove the respondent's administrative endorsements from
the teaching certificate. Commissioners Joan Burgess and Darold
Faulkner joined in the dissent.

APPENDIX L. IPTPC HEARING RECORD 77-7

October 11, 1977
IOWA PROFESSIONAL TEACHING
PRACTICES COMMISSION

Westfield Community)	
School District,)	
Complainant	)	Case 77-7
)	
vs.	)	Order
	)	of Dismissal
William Rohlman	)	With Censure
Respondent)	

STATEMENT

Jurisdiction: The respondent is an Iowa teaching certificate holder. The complaint was filed by an Iowa school district, alleging that during the 1976-1977 school year its employee, Mr. Rohlman, engaged in conduct that was unprofessional. In accordance with the alleged facts the commission has jurisdiction of both the parties hereto and the subject matter (see Section 272A.6 of the Iowa Code).

Procedure: Subsequent to hearing notifications served on all parties in accordance with Chapter 17A of the Code and our rules, the matter came on for a hearing in the Grimes State Office building in Des Moines at 1:00 p.m., on September 23, 1977. The Westfield Community School District was represented by counsel, Maurice Nieland of Sioux City, Iowa. Mr. Ted Port, former school board member, was the sole witness presented for complainant. The respondent was represented by attorney Mark Adams of Des Moines and David Grosland, UniServ director from Cherokee, Iowa. Mr. Rohlman was the sole witness in his behalf. The majority of the evidence before the commission was a hearing transcript and its exhibits introduced upon stipulation by the parties. The transcript contains the evidence in the Chapter 279 proceeding to terminate William Rohlman's teaching contract with this complainant, such proceeding held before the Westfield board on March 29, 1977 (see commission's exhibits I and II). Much of the evidence in the transcript and its exhibits is irrelevant to the issues here and the chairman accepted these documents subject to a relevancy limitation.

Since the commission voted to dismiss the case with censure (8 to 0 - Barbara Smeltzer absent), the facts and legal conclusions will receive only cursory attention.

I

Misrepresentation of Health

Finding: The commission finds that the complainant failed to establish by sufficient and appropriate evidence that William Rohlman, in connection with the teaching contract, wilfully and intentionally concealed and misrepresented a history of epilepsy.

Discussion: One issue advanced by the school district to show an unprofessional practice by the respondent is predicated on an undisputed history of epilepsy present in 1976 at the time of Rohlman's employment. The district contends that the respondent was guilty of a concealment or misrepresentation as to this fact (though it is less than clear how the district was "harmed" or "damaged" by such alleged fact.¹ We will concede that in some cases concealment or misrepresentation of a material fact amounts to an unprofessional practice under our statute (272A) and rules (Ch. 3 Iowa Adm. Code). But the alleged violation to be unprofessional must be more than accidental or negligent - the concealment or misrepresentation must be shown to have been intentional and wilful. In other words we hold that a guilty state of mind is necessary in this area before an educator can be subjected to the loss or suspension of the right to practice our profession.

In this case, it might be found that the respondent either accidentally or negligently misrepresented the state of his health. But there is no clear evidence, no substantial proof, and certainly no preponderance to establish wilful or intentional concealment or misrepresentation. Accordingly, this issue is dismissed.²

¹In a court action for concealment or misrepresentation it must be shown that the fact was material and damage resulted. In this case, Rohlman (some hearsay aside) contracted to perform specified duties for a year, which he did. Indeed, the only available evidence here recognizes that he performed those duties in a competent fashion.

²This evidential disposition of the health issue leaves unresolved difficult questions of the district's right to inquire as to the physical disabilities and the respondent's legal duty to reveal such disabilities. Obviously, the nature of the right (if any) to inquire will to some extent determine the burden to reveal. And, it is axiomatic that one is not guilty of concealing that for which there is no duty to reveal. In this regard, Iowa law and related administrative rules place restrictions on public employers in dealing with issues of physical or mental disabilities (see Ch. 601 A, 1977 Code; and IGRC Rules 7.6(1), 7.6(2) and 7.6(3), Iowa Adm. Code).

In general these provisions prohibit inquiry by a public employer regarding physical and mental disability "unless the question is based on a bona fide occupational qualification" (Rule 7.6(2), supra). In the instant case, neither the school board nor their counsel seriously contend that there is a relevant connection (occupational qualification) between the physical condition and the coaching and other duties designated in the 1976 contract. Indeed, in order to expel Rohlman because of his epilepsy the board thought it necessary, as the record clearly shows, to "realign . . . the . . . teaching contract to include" drivers education and ability to drive a bus (see board minutes, March 8, 1977 - part of commission's exhibit II). If as the district

Finding: The commission finds that the respondent, as the result of his special position of professional trust, came into possession of some three hundred and eighty dollars of student funds and applied said funds in satisfaction of his own personal obligations.

Conclusion: The facts set forth in the above finding are in violation of commission rules 3.3(1) (f) and 3.3(2) (d) (Iowa Adm. Code), among others, and constitute unprofessional practices.

Discussion: The relevant facts are not in dispute and will be reviewed only briefly. The respondent, a coach, brought his school basketball team together and ordered basketball shoes from a South Sioux City sporting goods firm. Mr. Rohlman collected about \$380 from the students to pay for the order. Subsequently, he used all of the student funds in satisfaction of personal obligations in another state. While it is not absolutely clear when, he arranged with the South Sioux firm to pay the account in the future. From our standpoint, it is of no relevance as to whether he made such arrangements before or after he spent the funds. It should also be recorded that subsequent to this transaction the sporting firm billed the school district which mistakenly responded with payment. The money was returned to the school account and at the time of our hearing the account had not been fully paid. Indeed, the record contains some evidence that respondent is in a position where "debt consolidation" is deemed necessary.

It is our ruling that this practice by the respondent is, on its face, unprofessional and in violation of criteria adopted by this commission. Questions of whether any harm can be shown or who notified the school first as to the practice simply are not revelant. An educator placed in a position of trust to students, a school district, fellow educators and the public is strictly accountable for any funds entrusted to him or her and the act of using such funds for a personal reason is unprofessional per se. We so held in a case with a comparable issue decided this year (Beaty vs. Chauvin).

fn 2 continued

contends these "aligned" duties were clearly known to Rohlman when he contracted it is difficult to see the utility of the board's action in this regard (except as a predicate to the termination proceeding). We recognize that the record contains hearsay evidence which is hazy and equivocal to the effect that Rohlman was told that he was expected to handle drivers education and drive a bus in the future. Even if this evidence was clear and convincing it offers little on the question of Rohlman's duty to reveal his health history. If that was not relevant to the original contract, he was under no legal or contractual obligation to remain in the district beyond the expiration of the 1976-1977 teaching contract. There are other difficult legal issues bearing on Rohlman's duty to reveal his epilepsy (e.g., the effect of his revelation to Dr. Torbort in early September and the relationship of Torbort to the school district).

The district in its termination case tagged this practice "dishonest." Neither the record there nor the one here supports such an allegation. On the other hand, dishonesty is not a necessary element of a practice deemed unprofessional. Moreover, while harm or damage is not relevant to its professional quality the condemned practice is inherently risky. In this very case the practice resulted in the district paying the account and perhaps only chance revealed the error. Moreover, the practice resulted only because the respondent was laboring with obligations he could not easily handle. Apparently, such remains the case since "debt consolidation" efforts have and are being explored. On this record can respondent really say there is no chance the firm will not be satisfied? And, if not satisfied what will the firm do? Look to the school district, the students, the parents or move to repossess the items? While harm is not strictly relevant, it can be seen that the risk of harm is inherent in each case and is a reason for the rule.

Decision

While we have been critical of respondent's use of student funds, our overall review of this record leads us to believe that any further sanctions are not warranted. Accordingly, all eight members present (B. Smeltzer absent) voted to dismiss the case with censure. Thus, William Rohlman is to understand that using student funds for his personal purposes was wrong and unprofessional and he deserves to be censured.

Case dismissed.

October 14, 1977

DRB/dcc

Don R. Bennett

For the Commission, Don Bennett,
Director & Legal Advisor

APPENDIX M. IPTPC HEARING RECORD 80-13

Iowa Professional Teaching
Practices Commission

301

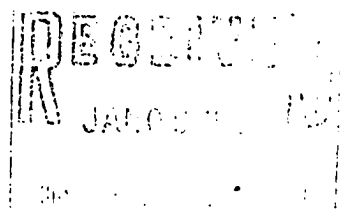
Lewis Central Educational Association, Complainant)	
	)	Case 80 - 13
vs)	
	)	Hearing
Clarence Miles, Respondent	)	Decision
)	

Statement of Case

The instant complaint, initially alleging two incidents of converting funds of Lewis Central Schools to personal use, was filed September 5, 1980. Subsequent to inquiry and staff hearing recommendation, on October 31, 1980, the commission acted unanimously in assigning the matter for evidential proceedings on December 19, 1980. Chapter 17A hearing notice, dated November 13, 1980, was served on the parties and receipted therefore. James Sayre and Robert Mannheimer, Des Moines, appeared as counsel for complainant. Respondent did not appear or otherwise participate in the proceedings, except he filed a brief "Answer" (12-9-80) and asserted financial problems precluded action on his part (see Respondent's exhibit "A"). While the commission may not stay Section 272A.6 proceedings due to personal hardship, our legal adviser was informed by Robert Fitzsimmons, head, secondary principals association, that had Miles sought representation he was eligible for consideration of assistance because of membership during the time period involved. At the hearing and based on evidence obtained by subpoena, complainant moved to amend to include two additional counts of alleged conversion of district funds or property. The amendment was granted and noted in the record by action of the presiding chairman.

Jurisdiction

The respondent at material times was a member of the teaching profession (Sections 272A.2 and 272A.6). Complainant is an entity having standing to proceed here (2.4(1), Iowa Adm. Code, Professional Teaching [640]). The subject matter involves allegedly unlawful and unprofessional practices in violation of professional criteria of this agency. Accordingly, Section 272A.6 of the Iowa Professional Teaching Practices Act grants both personal and subject matter jurisdiction.



Statement of Facts

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Preface: By way of general outline, the association sought to prove that Miles, a Lewis Central High School Principal, by misuse of his authority and trust as to school district funds, converted district monies and property to his own use in connection with four incidents we designate as: a) fireplace episode; b) electronic devise episode; c) airline passenger ticket refund; and d) missing T.V. episode. Without detailing the evidence further hereinafter, there is no dispute that during portions of time covering some of these episodes, the Lewis Central customary chain of command as to matters such as purchase orders and authorizing and executing payment warrants was modified by illness of persons having the prime authority (Business Manager Fisher - died; and Lewis Central Finance Secretary) in a way that Miles enjoyed enhanced responsibility as to such (see e.g., Respondent's exhibit "A").

Evidence - Credibility: The complainant's case consists of three live witnesses and financial and business documents. Since the issues are serious and the respondent did not appear, our reflections as to witness credibility, motivation and demeanor is briefly noted. To the best of our knowledge, there was no visual "presence" of the association but there were a couple of nonprofessional employees under subpoena not testifying:

a) Complainants' chief witness, head, Industrial Arts, requested and got a subpoena to appear. Upon questions by our legal advisor aimed at probing possible hostility toward Miles, this educator noted a longtime friendship and in connection with his answers in this area displayed demeanor and visible emotions contrary to any suggestion that he was hostile to or "out to get" Miles.

2. Lewis Central superintendent required a subpoena. Being aware of alleged episodes a) and b) he had permitted the principal to resign voluntarily. Subsequently, he discovered episodes c) and d). He testified in a forthright manner, show no tendency of personal hostility, and was a creditable witness.

3. The remaining witness was Miles personal secretary. Her only evidence is to the effect that a time came when her boss asked her to misrepresent a fact which she did not do.

Fireplace Episode

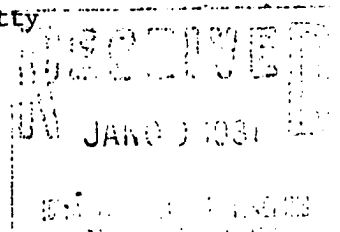
Upon the requisition of principal Miles (1-12-80 - exhibit "3") a Lewis Central purchase order and district warrant were issued in favor of Lumberman's Natural Stone, Omaha, in satisfaction of \$671.37 worth of the firm's merchandise (exhibit's "1", "2" and "4", respectively). Miles signed the check and the industrial arts account (code 20141), a student support fund entirely of student fees, was charged (see exhibit "3"). Wilson Forbes, head of that department, thus learned of the transaction; testified that he had requested no such purchase nor

received the fruits thereof; and that as the result of this issue he investigated and obtained personal knowledge that the Lumberman's stock purchased by the district was used mostly to furnish respondent's home with a fireplace. This fact is uncontroverted on the record; Miles, when confronted by Forbes, saying he would take care of the matter. Forbes stated that he had associated with Miles for years and when assured that a personal check would be issued he allowed the matter to rest until February 18, 1980, at which time the I.A. account was credited with \$200 by Miles. Exhibit "5" reflecting the \$200 credit recites the money is for "100 board feet of walnut." Forbes said that he knew that there had not been any such purchase of walnut through his department by him, Miles or any one else. He assumed this was Miles' way of getting some funds back into the account as the result of the Lumberman's fireplace. The record remains static as to the \$200 walnut transaction until late April, at the time of Miles forced resignation. At that time he issued the district a check for \$471.31 re Lumberman's. Lewis Central superintendent testified that when he confronted Miles as to a \$200 shortage in the fireplace transaction, the respondent said the record of the "walnut purchase was in error, the \$200 intended for the Lumberman items. If the "walnut" was an error the record contains no evidence showing that anyone other than the respondent supplied the erroneous information. After the February deposit, the record reflects no efforts to repay the district until Miles was confronted by superintendent Smith and provided a chance to resign.

Electronic Device Episode

Though not entirely clear, the record suggests the item at issue is a door opener - here devise. Forbes testified that in late March, 1980, he was notified that his account would be charged for the device as a replacement for one damaged by students. Since no such incident existed in his department, Forbes was told by respondent the expenditure belonged to "science." Forbes asserted that a check with science revealed no such damage episode there either. At any rate, on March 27, 1980, Miles caused a purchase order ("Replacement of (device)"), requisition and district warrant to be issued, all in favor of a \$45 transaction with Sutherland Lumber of Omaha (exhibit "6"). These documents show account code 20175 to be charged, not the high school science account but a junior high picture account. A week following warrant issue (4-3-80), Miles sent a memo to the finance office listing three junior high students to be collectively charged \$45 for the Sutherland item, the money to go into code 20175.

Forbes testified that he checked with the junior high staff and found no evidence of a damaged device episode there either. The instructor said he knew the electronic device replacement did not actually happen because he had ascertained that Sutherland did not sell the item. Moreover, Forbes testified that in the course of his inquiry he saw the check (exhibit "6") and knew that when Miles negotiated it Sutherland returned some \$18 in cash which was not returned to the district. Subsequently, Miles told Superintendent Smith his secretary, Betty



Smnetana, negotiated the \$45 warrant with Sutherland and received the change which inadvertently was not returned to the district. Ms. Smnetana, however, told Smith and testified here that the story of her warrant negotiation was what her boss asked her to say but she had no part in the transaction. The superintendent testified that after the matter was under investigation and forced resignation apparent, the principal deposited \$45 for picture account 20175 (exhibit "8").

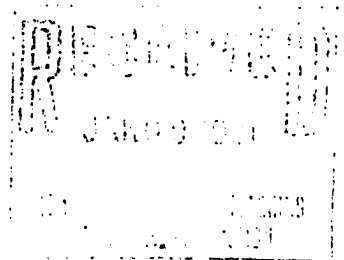
304

Airline Refund

Subsequent to Miles' forced resignation in April, 1980, superintendent Smith said he found a further problem involving a cancelled Chicago conference. Sometime prior to April 15, 1980, the district purchased airline tickets at a cost of \$498 for Miles and two other administrators; following conference cancellation the other two returned the fare refund to the district; but respondent though obtaining a refund of \$166 around April 15, 1980, did not do likewise. Upon learning of the incomplete conference refund issue, Smith confronted the principal and was told that the district owed him for travel claims and he had considered the ticket refund as a setoff. Subsequently, the superintendent found on his desk (about 6-24) a letter and a Midland Travel Check 1438 dated April 15, 1980, and payable to Miles in the sum of \$166 as airfare refund. Smith called the agency; was told that on June 22, 1980, respondent came to the office and requested that Midland prepare the refund check but date it back to April 15, 1980; and they did so but hadn't been paid as yet. He sent the check back to Midland and ordered payroll to adjust respondent's final pay to satisfy the refund (exhibit "9").

Missing T.V. Episode

In less than a week following Lumberman's "fireplace," respondent executed a purchase order and a district warrant in favor of Brandeis for \$455 in satisfaction of a black-white television (\$85) and a colored one (\$369) for the music program (exhibit "10"). In late June, 1980, superintendent Smith received a call from Ms. Smnetana and learned from her that she had found the Brandeis purchase documents for two sets but only the one set was listed and carried on district inventory. That inventory card was signed by the principal (exhibit "10"). According to Smith, a careful search failed to discover the color set. Miles when confronted by Smith is made to say that an adapter was not right; that he returned it to Brandeis for an exchange; and carried the second back to Lewis Central. The Superintendent told Miles of the fruitless search, whereupon he said, O.K., I'll pay for it and executed a check for \$369 (exhibit "12" - July 3, 1980).



Findings of Fact

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1. The commission finds on two occasions during the first quarter of 1980 (fireplace and electronic device), respondent Miles without authority from Lewis Central Schools used school district funds to obtain property for his personal use, including some \$18 in cash.

2. It is further found that on two other occasions during the first half of 1980 (T.V. set - air passenger refund), subsequent to the lawful expenditure of funds by Lewis Central, the fruits thereof were appropriated by respondent to his own use.

3. It is also found that in each case where respondent made restitution, such was not consequent upon his own volition but resulted only upon or after confrontation as to each appropriation.

4. Finally, it is found that as to all four occasions noted above, the property and cash was converted by Miles with the intent of permanently depriving Lewis Central thereof.

Legal Conclusions

The following professional criteria are found by the commission to have been violated with the legal conclusion that the conduct found above constitutes unprofessional practice (see Section 272A.6, IA Code):

Iowa Adm. Code, Professional Teaching--Rules 640-3.1 (violations of school laws); 640-3.3 (1) (f) (not use professional relationship with students for private gain - student support fund); 640-3.3 (2) (d) and (3) (using school position for private gain and resulting compromise of professional judgment); 640-3.3(e) (not refuse to participate in commission inquiry); 640-3.3(4) (not in any way violate terms of contract); Rule 3.3(4) (use funds granted for purpose intended); 640-4.12 (4) and (8) (provide appropriate example for others - exercise judgment in use of authority) see also 640-4.5(d) and 640-3.3(3) (c).

Discussion


The chief administrator for Lewis Central testified that after investigating and working with Miles on these problems for months, he concluded the administrator is not professionally or morally fit to function in the teaching profession of Iowa or elsewhere. The members hearing the case agree (Williams, Lemke and Smeltzer absent).

In two prior cases, one of which involved a superintendent using a school account for personal use (Shellsburg Ed. Assn. vs. Chauvin), we held it unprofessional and in violation of school laws and taxing statutes for an educator to satisfy private obligations by initially using employer or student funds. In both cases the conversion was clear, but the evidence was not compelling that the member of the profession intended to forever deprive the rightful owners of their property though, as here, it was established that our criteria were violated by the fact of private gain by position and because of avoidance of state taxing obligations. The Lewis Central Association has proffered a substantial and creditable record establishing more serious professional abuse. While it can never be our responsibility to determine criminal culpability per se, we are convinced on the facts here a jury might find liability for theft. We think the respondent converted the property and monies with the design and action to permanently deprive Lewis Central of its use. Those portions (except \$200) eventually returned did not result from free willing acts. Moreover, the case is aggravated by the fact Miles used and abused his charges in the process. The fireplace was purchased from student support fees and he specifically justified the \$45 warrant because of fault put on three specific students. He claimed their liability for the \$45 he obtained even though he pocketed a large percentage thereof. He also on the record counseled his secretary to lie about that transaction.

Decision

We have found violations of several of our professional criteria and under Section 272A.6 they are "deemed . . . unprofessional practice" and a legal basis for revocation of the teaching certificate. On this record, respondent is not professionally fit to continue in the teaching profession. Accordingly, we have unanimously acted to proceed under Section 272A.6 of the Code to cause revocation of Miles' teaching certificate.

Dated January 8, 1981


Jo Ann Burgess,
Chairman

APPENDIX N. IPTPC HEARING RECORD 81-1

Iowa Professional Teaching
Practices Commission
308

Muscatine Community School District,)	
)	
Complainant	)	Case
vs	)	81-1
Fred Blaskovich,)	
Respondent	)	Hearing Decision
)	
)	

Statement of Case

Subsequent to the respondent's December 1980 discharge from employment with Muscatine Schools, the district board caused the instant complaint to be filed on January 29, 1981. That pleading alleges that respondent Blaskovich should incur professional liability in accordance with Chapter 272A of the Code and commission rules as the result of incompetent, insubordinate and other impermissible teaching practices and attitudes. Following inquiry (in which respondent did not participate--see file letter, February 11, 1981) and staff recommendation, the commission, on March 13, 1981, acted unanimously in assigning the matter for hearing on May 8, 1981. Hearing notice dated March 25, 1981, was certified to all parties with the executed receipts for service returned to us. On May 1, 1981, respondent filed motion to dismiss, the merits of which are considered below. On the designated hearing date superintendent Arthur Sensor appeared for the district which was represented by Muscatine counsel, Patrick Madden (Stanley, Lande, Coulter & Pearce). Fred Blaskovich also appeared and was represented by Des Moines counsel Robert Mannheimer (Dreher, Wilson, Adams, Jenson, Sayre & Gribble).

Jurisdiction

Chapter 272A of the Code invests the commission with personal jurisdiction over members of the teaching profession, i.e., an educator required to hold state teaching certification. The Agency's subject matter jurisdiction involves the power to adjudicate and determine alleged violations of professional criteria adopted by the commission (Section 272A.6). In this regard, Iowa school districts have standing to complain (Rule 640-2.4 (1) (b), Iowa Administrative Code, Professional Teaching). Respondent is a member of the teaching profession. The complaint alleges specific teaching practices which could involve several professional criteria and require adjudication as to the issue of violation.

Hence, the commission has both personal and subject matter jurisdiction.

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Motions

Motion to Dismiss:

The motion and relevant pleadings reflect that on December 22, 1980, Blaskovich was the subject of Code Chapter 279 discharge proceedings to be held by the Muscatine school board upon notice of superintendent Sensor. At oral argument on the motion, attorney Madden conceded the teacher had requested a private hearing (279.15 (2)). Blaskovich, however, failed to appear, whereupon the board proceeded with the witnesses and other evidence all of which was recorded. The complaint filed with this agency had, as an attachment, the board's termination findings, conclusions and order. Subsequently, commission legal advisor, Don Bennett, requested of superintendent Sensor and received a transcribed copy of the December 22, 1980, evidential record (file stamped by Bennett, February 26, 1981). The record relating to the motion to dismiss contains a professional statement by the legal advisor wherein it is noted that the transcribed Muscatine record was not provided or available to the commission members and that they had not been told about, seen or read such. In short, the respondent calls for this dismissal seemingly on the theory that December 22 hearing data about Blaskovich's teaching practices was wrongfully, perhaps illegally, transmitted to a commission official.¹

A

Jurisdiction

While from the respondent's standpoint it may be unnecessary, we think it important to establish at the outset that this motion does not and cannot seriously question our jurisdiction, or if you will, our power to proceed with the merits of the case. Our jurisdiction to act upon a given subject matter is strictly defined by statute (Section 272A.6). If all of the elements generating the power are present, no mere act of transmitting information to the agency offices, however wrongful or inappropriate, divests the

1. Counsel also contends that once his client failed to show, the school board was without authority to take evidence or hold a hearing. We note the position but fail to see any relevance to us in deciding if the motion otherwise has merit.

statutory entity of its power to act. As already noted, these elements are present here generating both personal and subject matter jurisdiction. Accordingly, if the motion were to prevail it would have to be for reasons other than agency power to reach the merits.

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B

Private Hearing - Record Status

In support of dismissal, respondent advances a theory of legal privilege perhaps grounded in considerations of privacy. According to the motion, the fruits of a Chapter 279 private termination hearing are not "public records" (i.e., exempted from Code Chapter 68A) and thus are legally privileged against inspection and disclosure. In conclusion, respondent argues that the complaint should or must be dismissed because Muscatine, without consent, furnished record materials generated at the termination hearing. The motion ignores as immaterial the question of whether the factfinders and adjudicators (participating agency members) were contaminated by the suspect materials. In light of the exclusionary rule in Fourth Amendment cases (evidence obtained by constitutionally infirm search and seizure excluded from criminal trial), the relief sought here is remarkable. Under respondent's theory, where the constable blunders in a nonconstitutional manner in the course of a noncriminal proceeding, such fact is seen not as a basis for suppressing the suspect items, but as vitiating entirely the Chapter 272A cause of action. District counsel responds, in part, that the theory of the motion fails because the private hearing provisions were inapplicable to Blaskovich once he chose not to be present on December 22, 1980. While granting apparent merit to that waiver observation, we are of the opinion that the motion should be overruled on three other grounds (on the merits; as seeking an inappropriate remedy; and because of a lack of prejudice):

1. The Merits: Assuming a Section 279.16 private hearing, the work product generated therein is statutorily exempt from the effect of Chapter 68A of the Code (Public Records--Examination of Same). Apparently, this means that such work product is not a "public record" (68A.1) and not subject to inspection by "[e]very citizen of Iowa" (68A.2). In procuring the Blaskovich termination transcript, this agency, however, was hardly one of "every citizen of Iowa" to whom Section 279.16 proscribed access to the record. Where an educator has been discharged by an Iowa school district on grounds of alleged professional unfitness to practice teaching, the district evidence supporting such unfitness is so obviously germane to a subsequent Chapter 272A commission decertification proceeding that it seems remarkable respondent would argue the contrary. Suppose in a Chapter 279 private hearing an educator confesses to the sexual abuse of a ten year old female student

under his charge. Must the trial court, under respondents's theory, dismiss a subsequent criminal prosecution generated by the school district proffer to the county attorney of the termination hearing transcript?

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In creating the commission, the Iowa Professional Teaching Practices Act (Chapter 272A) assigned, as a major goal, efforts toward maintaining a teaching profession whose members are professionally fit to engage in the practice of teaching. Thus, for example, the commission was directed to establish professional criteria concerning the "competent performance of all members of the teaching profession"(Section 272A.6). To an extent, Chapter four of agency rules responds to this requirement (see Iowa Administrative Code, Professional Teaching[640]). Alleged violations of these and other criteria, trigger jurisdiction to consider the issue of decertification or removal from the profession ("A violation, as determined by the commission following a hearing, of any of the criteria so adopted shall be deemed to be unprofessional practices and a legal basis for suspension or revocation of a certificate"--272A.6). In this respect, as to the substance and the weight of any such alleged violation the commission has the power to compel production of "books, papers, records and any other real evidence" necessary and relevant to the case (Section 17A.13 of the Code). Since these statutory provisions (Chapters 272A and 17A) governing Practices Act functions are in pari materia with the teacher termination provisions (Chapter 279), these statutes must be construed to harmonize with each other. Andrew vs Iowa State Bank of Osceola, 250 N.W. 492 (1933--Iowa Sup. Ct.); Wright vs Des Moines, 210 N.W. 809 (1926--Iowa Sup. Ct.). In keeping with the above legislation, by both reason and express statutory language, the record of the Muscatine termination hearing was accessible to this agency. The contrary reading of these provisions by the respondent is clearly an exercise in statutory construction producing an unreasonable and illogical end product (evidence of alleged unfitness to teach may be used to discharge but denied commission on issue of fitness to practice teaching in decertification proceeding). Statutes are not to be so construed. State vs. Berry, 274 N.W. 2nd 263 (1976--Iowa Sup. Ct.).

2. Motion to Dismiss--Inappropriate Vehicle Seeking Inappropriate Remedy: Assuming arguendo that Blaskovich had a statutory privilege of nondisclosure as to the Muscatine termination transcript, a violation of that privilege does not, of its own force, leave the commission powerless to proceed under Chapter 272A as to the issue of alleged professional unfitness to practice teaching. While trial courts are often requested to exclude evidence covered by a legal privilege (e.g., attorney-client relationship), we know of no appellate holdings directing a dismissal of a case because privileged evidence was permitted in the record. Even where the "privilege" or "right" springs from fundamental provisions of the Bill of Rights (e.g., 4th Amendment--

right to be secure in one's home, person, papers and effects), it has never been held or suggested that procuring evidence in violation of the Constitution required, for that reason alone, that charges related to such evidence be dismissed (save where such evidence is the entire case). In all such cases, the permissible remedy is the suppression or exclusion of the suspect material.

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In this case, the respondent did not ask the commission to suppress or exclude the hearing transcript requested by legal adviser Bennett. The cases are legion that hold if he claims entitlement to a privilege of nondisclosure he must assert such. At any rate, a motion to exclude the transcript would have been disposed of along the lines of our "merit" position advanced above.

3. Nonprejudice: Finally, insofar as our Chapter 272A disposition of the complaint is concerned, Blaskovich has been subjected to no legal prejudice by reasons of disclosure of the private hearing material. As our hearing record reflects, the factfinders and adjudicators have not seen, read, or heard about the content of the termination transcript. Such was not accidental but happened by design. In order to minimize the risks of prejudgment of the facts of each Chapter 272A case, the legal adviser isolates commission members as nearly as possible from evidential kinds of material. While we are not sure if the respondent's motion also faults the exhibit to the complaint (Muscatine termination order), it was not admitted at our hearing and has not been considered as evidence.

Motion to Exclude:

A copy of the Muscatine board's termination order discharging Blaskovich was appended as an exhibit to the Chapter 272A complaint. At the hearing, respondent moved to exclude said order from the proceedings. On commission vote the motion was denied. While the ruling on the motion was proper in light of our discussion of the merits above, we want to note the controversy is now moot. No effort was made to make the termination order a part of the evidential record and it has not been considered as record material in our disposition on the merits.

Statement of Facts

Preface:

Fred Blaskovich, approximately thirty years of age, seemingly grew up in Slater, Iowa. He earned a bachelor of science degree from Iowa State University (1968-1971), having concentrated in areas of business, economics and physical education with a grade point average of 2.31 for 90 hours (respondent's exhibit "E").

The record further reflects an additional 89 hours of university credits as follows: Drake (1972-1973), 43 hours with GPA of 2.70; University of Iowa, 34 hours with GPA of 2.24; and University of Northern Iowa, 11 hours with GPA of 2.57. Blaskovich is shown as consistently receiving higher grades in those areas of concentration and exhibit "E" reflects participation in numerous coaching clinics as well as completion of a program for teacher preparation. Subsequent to a teaching internship at Dowling High, West Des Moines, Iowa, respondent was certified by the State to practice teaching (DPI certificate 171594--expires 6/30/84).

As noted in the margin, beginning with the 1974 school term the instructor taught in six districts in six and one-half years.² During such period, he also executed a seventh teaching agreement with Iowa's Ar-We-Va, upon the nonperformance of which he was subjected to professional saction by the commission. (Ar-We-Va Schools vs. Blaskovich, Case No. 79-21--in justification, pled an approaching September 1979 marriage to a Quad City bride.) Yet planning marriage in September 1980 and perhaps mindful of the Ar-We-Va sanction, the record reflects that respondent gave an appearance of accepting the Muscatine position by mid-July 1980 (R. p. 275), but then delayed execution of the written contract while extending efforts to obtain a position elsewhere (R. pp. 344-345). In support of the teacher's theory that complainant's position as to professional unfitness is inaccurate and unfair, he proffered written reference materials from officials of three prior employers (exhibit "G"). All three references emphasize coaching merit and the English Valley and Union-Whitten documents attest as to academic ability. Blaskovich, however, initially failed when questioned to note that he had also been "fired" by prior employers (R. p. 353).

At any rate, respondent ultimately contracted with complainant to provide professional services at the high school in consumer economics and to coach the sophomore football squad.

Of an Academic Nature:

Ronald Sturms, chairman, business education, testified that at the inception of the school year Blackovich asked him for graph paper so his students could chart the stock market; that such request was denied for the reason that such activity was not a part of consumer economics and, at any rate, must follow other financial studies; and that the course of study furnished the instructor at orientation outlines in detail the prescribed curriculum (R. pp. 204-205; see also, course of study, consumer economics, exhibit "3"). Consequently, Sturms advised high school principal

2. Aguin High, Freeport, Illinois (1974-1975); St. Johns High, St. Louis, Missouri (1975-1976); Union-Whitten High, Union, Iowa (1976-1977); English Valley High, North English, Iowa (1977-1979); Genesco High, Genesco, Illinois (1979-1980); Muscatine High, Muscatine, Iowa (1980).

William Rettko of the need for a conference to review the subject matter required by the course. Two such meetings were held with principal Rettko on September 2 and 9, 1980, wherein Blaskovich was counseled as to the required elements and principles of the course and the necessary order of progress (e.g., R. pp. 212-214). Against a background of twenty-three years of leadership in business education at Muscatine, Sturms noted that the essential purposes of lesson plans required by complainant is to develop the method for accomplishing daily tasks, to isolate the essential principles and issues to be taught as required by the district and to allow ongoing effective instruction by a substitute teacher (e.g., R. p. 208). The department head stated that prior to and in connection with the respondent's discharge, he reviewed the available lesson plans; that the outline failed to reflect the treatment of or intent to treat essential issues of the course; that, for example, consideration was not shown for the inceptual principle of supply and demand, for the role of production nor for the legal aspects of consumer agreements; and that he noted students were tested on subject matter (budgeting) in October which should not have been reached in the course until much later (R. pp. 208-209, 373-374).

Subsequent to a Sturm's observation alleging excessive film use by respondent (R. p. 66), principal Rettko and Blaskovich met on September 25, 1980, such conference being recorded by memorandum (exhibit "5"). Rettko advised the teacher that he was using too many films and that he wanted him to furnish weekly lesson plans so Rettko could review progress and transactions in the course (R. p. 67 et. seq.). The administrator testified that he received lesson plans on September 29, 1980, and on October 6, 1980, but that Blaskovich failed to turn them in for the rest of October (and seemingly portions or all of November - R. pp. 88, 95, 96). Moreover, both Rettko and Sturms complained that the required lesson plans and other student data were in fact not available to a substitute for consumer economics on November 5, 1980 (R. pp. 107-108 and 205). Rettko testified that the plans he did receive were not adequate but rather incomplete and vague (R. p. 88). The respondent does not deny that he failed to furnish some lesson plans to Rettko (R. pp. 349-350) but he contends that he prepared all weeks and school officials unfairly judged his plans only as to the work product turned in (R. p. 349, also pp. 151-153 and exhibit "A"). Sturms testified, however, that on December 1, 1980, he reviewed all of the Blaskovich lesson plans, including the ones prepared in late August and early September prior to the "turn in" order (R. pp. 206-209).

Grading and testing practices related to the course are also in issue. Through a student complaint, Rettko learned that the instructor allegedly assigned students their initial nine-week grades in relation to their class notes and in lieu of the traditional nine-week test (R. p. 98; exhibit "1", "grades", p.24). On October 28, 1980, the principal asserts that Blaskovich told him that he graded the notes on neatness and quality of the work

transcribed, assigned the nine-week grade thereupon and indicated no further factors as relevant (R. pp. 93-94). Though the respondent's own testimony contains a brief reference to quizzes (R. p. 339), the record is silent as to efforts to rebut or explain the nine-week grade issue. As to the testing incident, on September 18, 1980, a meeting was held to instruct faculty on giving the Iowa Test of Educational Development (ITED). The respondent in giving test E (part I, expressions, 30 minutes and II, spelling, 5 minutes) failed to give part I (R. pp. 72-73; exhibit "6"). According to Rettko, no such problem existed with other faculty and on September 25, 1980, the teacher told him he didn't know he was supposed to do part I (R. p. 73). In his testimony, respondent concedes he failed to do this portion (R. p. 342).

Mr. Sturms testified that his room was next to the consumer economics classroom; that perhaps as often as two or three times weekly he and his class were subjected to loud sounds; and that such, especially Blaskovich's film projector, did interfere with his own progress (R. p. 209-210). While this testimony is not dated, Sturms does sharply complain of noise from respondent's room during Thanksgiving week. He received complaints from three other department members that week and he stated that on Wednesday, the 26th, it became unbearable (R. p. 211). Sturms asserted that he spoke to Rettko on Monday of that week about the noise level and had told him earlier about other objectionable activity in respondent's room (R. p. 211). He testified that the activity referred to was his frequent observations in passing the room that nothing productive or in keeping with course progress was taking place--"Fred setting at his desk reading the paper or what have you" (R. pp. 211-212). Sturms said he became so exercised by Blaskovich's mockery of education that he threatened to resign that Wednesday before Thanksgiving (R. p. 215).

Somewhat in support of Sturms evidence, Rettko testified that on October 28, 1980, he complained as to respondent's lack of classroom control; that on occasion when passing the room he observed students in the room before class began sitting on desk tops or congregating in groups; that when the bell rang it took five to ten minutes before the students were positioned for study; and that he directed Blaskovich to remedy the situation (R. p. 95). The principal stated further that shortly following a pep assembly on Wednesday afternoon, November 26, 1980, the guidance chairman came to the office and said: "You better get upstairs; they have quite a problem...Mr. Blaskovich's class is creating such a disturbance...you can't believe. It's unbelievable" (R. pp. 111-112). Rettko arrived at the end of that period and when he got the teacher aside he was told that the students were playing a game (R. p. 113). In connection with the incident, Rettko also received reports from three additional staff members and learned one teacher had closed the door on the game playing only to have it immediately reopened (e.g., exhibit "11"). The administrator said

he then waited in the hall to observe what would happen with respondent's remaining class; that he saw nothing was happening and went to the back of the room for about fifteen minutes; that respondent remained at his desk while students read the paper, visited quietly or did other assignments; and that upon asking several students he was told they had "free time" (R. p. 114). Rettko directed Blaskovich to come to his office at the day's end, which request, without explanation, was not honored (R. pp. 115-116). Somewhat related to the above incidents, regarding supervision and use of class time, is the testimony by Rettko and Sturms that, until ordered stopped, Blaskovich used the business department phone during class for private stock transactions (R. pp. 67-68).

While respondent's case in chief did not address Sturm's and Rettko's allegations about noise and classroom control, he proffered the following comments to commissioner Williams about the November 26, 1980, password game episode: "The kids were loud. I don't think they were totally undisciplined. They might have laughed...the kids were loud and it did disturb the other teachers. They didn't like it...and, it wasn't a good situation, you know. I shouldn't have done it, okay?... The door was open. They [staff] closed the door. I guess we opened the door back up." Ms. Williams: "You don't know?"... Witness: "I didn't open the door. Yeah, it did. It was opened." (R. pp 356-359). He also told the agency legal advisor that he does not claim that complainant's discipline and noise assertions are lies or inaccurate (R. p. 369).

During his tenure at Muscatine High, Blaskovich was formally evaluated on September 10, 1980, and on October 2, 1980 (exhibits "B" and "C"). The first by school administrator Herwig is unremarkable though the report suggests modification in lesson plan use. The October 2nd evaluation by Rettko notes the teacher made good use of the blackboard in relating subject matter; the students were attentive and interested, and rapport was present. The report also contains unremarkable points of criticism. Principal Rettko testified that in keeping with school district policy the respondent received seven days prior notice as to the day and hour when each evaluation would be conducted (R. pp. 155, 181). On cross-examination, the principal admitted his report depicted a competent instructor that day (R. p. 156), but he reminded his own counsel that Blaskovich had seven days to prepare and that he (Rettko) always opted for a positive evaluation to motivate his teachers (R. p. 181).

Of a Coaching Nature:

While the record is confused as to the exact date, Blaskovich commenced sophomore coaching duties in early August. As to the substantive program, he was responsible to varsity coach Gary White and under the administrative supervision of the athletic director,

Steven Waterman. The sophomore squad numbered slightly less than twenty students. Predicated on the following testimony, Waterman and White both concluded Blaskovich was neither competent nor fit as a coach at Muscatine high:

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1. White directed respondent to send out letters prior to the season to sophomore prospects, which was never done. White finally had to do the project himself but was late (R. pp. 275-276).

2. White instructed respondent at the start of the season to give the customary physical fitness tests and told him he wanted a record of the tests for future comparison purposes. White stated that he did not carry out these instructions as to all students and though he asked several times for the records, he never got them (R. pp. 277-278).

3. Waterman testified that the first season contest was had September 5, 1980. He had assigned to Blaskovich in early August the job of working up the relevant sophomore data for the programs for all games. The material was not furnished by the requested date (Aug. 26), and Waterman made efforts to obtain it on August 27, 28, and 29. Blaskovich did furnish the data on September 3, 1980, too late for a first game program (R. pp. 250-251). As to the remaining games, the material was not always on time and Waterman said that from his observations at several games he noted numerous errors in accuracy as, for example, jersey numerals not matching players (R. pp. 251-252).

4. Waterman testified that respondent failed to conduct assigned practices. As an example, he noted an October inservice day from which the coach was excused as a matter of policy so as to hold practice. Only four boys showed up, thus aborting the practice; though the varsity squad got the word and had practice (R. pp. 253-254).

5. The athletic director had made it a point to attend several of respondent's contests. He asserted that he found Blaskovich's coaching efforts and supervision of the team confused and disorganized on the field and around the bench. He said, by way of example, that on several occasions a time-out was necessary because ten or twelve players were on the field and he also observed times around the bench when players were confused, looking for directions but getting none (R. pp. 253-254).

The above evidence as to coaching incidents proffered by Waterman and White were not considered by Blaskovich during his case in chief.

Concerning Student Health and Safety:

Exhibit "12", a memorandum by coach Washburn, dated September 1, 1980, to Steve Waterman concerns an injured football player allegedly left unattended by Blaskovich in a whirlpool. Waterman testified the report reflects that on August 29, 1980, coach Washburn arranged to have respondent observe the boy for a ten minute treatment and then left the area; that Washburn returned when the student had five minutes remaining; and that the respondent had left the student unattended and gone off campus (R. pp. 236-238). This whirlpool incident is not furthered considered by respondent on cross-examination or in his own case.

Exhibit "14" is a letter of reprimand issued on November 5, 1980, by superintendent Sensor and predicated on a report by Waterman concerning an incident involving respondent and student Edward Failor. Waterman testified that on October 17, 1980, during halftime of a sophomore game Blaskovich became irritated with the boy and pushed him down on the concrete locker room floor. Waterman stated his investigation showed that respondent's anger was caused by the fact that Failor, the quarterback, repeatedly asked during halftime "who will carry the plays in" (R. pp. 243-245). It was conceded that the student told the teacher subsequently to "get your fucking hands off" and that Edward may have been verbally provocative prior to physical contact (R. pp. 245 and 247-260). The boy's father, a Muscatine attorney, active in politics, was very upset about the incident and told Waterman he wanted some kind of action administratively and was considering criminal assault and battery charges (R. p. 243). The athletic director asserted that on October 29, 1980, he provided Blaskovich with a preliminary report on the incident and the teacher was to come to his office the next day; that respondent failed to show on October 29, 1980, whereupon Waterman directed him to be at a 9:05 a.m. conference on October 31, 1980; and that Blaskovich also failed to attend that date (R. pp. 246-247). The respondent, during his case in chief, acknowledged the use of physical force against Edward was wrong and expressed the opinion that this football incident is the moving reason behind his termination and this action (R. pp. 332-333). Though not clearly articulated in the record, Blaskovich entertains a theory that the main reason he came to grief in the district is due to an accommodation by district officials to placate the efforts and desires of an influential family of which Edward is a part (R. p. 332).

Miscellaneous:

A number of other alleged incidents for which complainant faults Blaskovich were recorded, some of which are briefly noted:

1. Principal Rettko testified that at an August 22 staff

meeting, at which respondent attended, he stressed that staff teachers were not to get involved in any scheduling changes of class periods (R. p. 61); but that a few days later Blaskovich did get so involved, consenting to a change of Tom VanEst to first period (exhibit "4"; R. pp. 56-61).

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2. According to Rettko, on November 5, 1980, the teacher requested district sick leave, later conceding to Rettko that he used the day to attend a football game in Geneseo, Illinois (R. pp. 107, 110 and exhibit "10"). The principal noted the problem was aggravated by the instructor's failure to have the required lesson plans, textbook and seating chart ready for a substitute (R. p. 108).

3. Rettko also testified that at the August staff conference he stressed that Muscatine staff absolutely should not make physical plant keys available to students (R. p. 100). On October 30, 1980 (exhibit "9"), respondent's lost school keys came into Rettko's possession and it developed that earlier in the day Blaskovich had given them to a student to gain entry into a portion of the physical education area (R. pp. 99-102). Respondent concedes he gave the keys to student Doug Cooke but says he understood teacher Beatty was to supervise the students while in the area (R. p. 102), though the records reflect that Cooke had the keys in his possession and lost them in a later class.

4. Superintendent Sensor, acting in accordance with school law on teacher pay, withheld Blaskovich's October 20, 1980 paycheck for failure to have on record results of a health examination (R. p. 92). Rettko, noting the matter was required on file by commencement of school, testified that on October 24, 1980, he permitted time off for such purpose but even then the instructor did not use the standard school form which had been provided (R. pp. 92-93).

Rettko asserted that respondent was tardy in attending to several other significant items (arrived at 3:00 p.m. for a 2:00 p.m. contract interview on July 14, 1980 - R. pp. 44-45; failed to return his contract by August 1, 1980, its date of expiration - R. pp. 45-46; and failed to furnish the board secretary the necessary transcripts - R. p. 46).

5. Without noting details, the reader with a hearing transcript is referred to the remaining incidents: a) gym supervision, R. p. 61; and b) use of phones, R. pp. 67-68.

Findings of Fact

1. As to respondent's Muscatine teaching and teaching related practices, the commission finds that the allegations of the complaint and of the five complaining witnesses have all been established by a preponderance of the evidence. Specifically, the allegations referred to are all of those teaching or teaching related practices reproduced in our statement of facts supra. Any issue as to

creditability and accuracy of the supporting proof is largely removed by respondent's hearing admission that the relevant practices at issue occurred.

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2. Predicated on the cumulative impact of the factual incidents noted in the margin,³ we also find the respondent engaged in a practice of teaching and a course of teaching conduct professionally unacceptable under Iowa school law, practice and custom and proscribed by Chapter 272A criteria of professional practices. While primary support for this finding is the margin reference, it is to be understood that direct corroboration thereof results from the factual basis upon which findings 3 and 4 depend.

3. As to the evidence relating to coaching (noncompliance with or inadequate response to directives concerning physical testing, football program data and recruitment; failure to hold required practice sessions and to exercise the skill necessary to field a team relatively organized and disciplined; and engaging in the use of proscribed physical force against a player), we find that respondent engaged in a practice of coaching and a course of coaching conduct professionally unacceptable under Iowa school law, practice and custom and proscribed by Chapter 272A criteria of professional practices.

4. It is finally found that respondent engaged in various other acts or omissions⁴ reflecting either willful or negligent disregard of Iowa school law, school policy and practice and school management authority. Such teaching related practices, though collateral to the teacher's core and designated task, reveal attitudes not consistent with demands of quality teaching; caused peer and management distractions with consequent harmful effect on the system; and as the result thereof substantially reduced respondent's effectiveness as a teacher.

3. ITED test; nine-week grading practice; lesson plans and failure to furnish plans for review and for use of substitute; graph paper--stock market incident; failure to follow and teach prescribed course of study for consumer economics; failure to maintain classroom control and discipline and to promote relevant student productivity; transacting personal business away from class in session; neglecting student learning by attending unauthorized out-of-state function; failure to safeguard health and wellbeing of student in hydrotherapy; and endangering a student's health and wellbeing through an assault and battery.

4. At least two counts of insubordination--one involving principal Rettko on November 25, 1980, and another athletic director Waterman following the student assault and battery; falsely claiming illness to avoid teaching duties on November 5, 1980, in order to attend an out-of-state sporting contest; giving physical plant keys to a student despite a directive proscribing such act; becoming involved with a student scheduling change; failure to provide a required health record until facing pay suspension; and otherwise being untimely in meeting responsibilities including those relating to his teaching contract, transcript and gym supervision.

Legal ConclusionsStatutes:

1. Violations of commission criteria deemed unprofessional practice and basis for teaching certificate suspension or revocation (Section 272A.6, Iowa Professional Teaching Practices Act).

2. Iowa Professional Teaching Practices Act acknowledges the necessity of professional fitness and competency as a requirement of continued membership in teaching profession: "develop criteria of professional practices including...competent performance of all members of the teaching profession" (Section 272A.6).

Case Authority:

1. Not only must an educator possess legal qualifications to teach (paper authority), he or she must be qualified in fact (Plainfield Education Association vs. Lau, case 78-8, pp. 16-18, decided January 1979).

2. Teaching incompetency or professional unfitness to teach were the evils prompting the suspension and revocation remedies of Professional Teaching Practices Act (Cf. Erb vs. Board of Public Instruction, 216 N.W. 2d 339 (Ia. Sup. Ct.-1974)).

3. Suspension or revocation of a teaching certificate must advance the purpose of the Practices Act, which purpose is to protect the public against incompetent or unfit teachers and to assure proper educational qualification, personal fitness, and a high standard of teaching performance (Cf. State Board of Education vs. Stoudt, 571 p. 2d 1186, 1189 (N. Mex. Sup. Ct.-1977); Board of Education vs. Swan, 261 p. 2d 261 (Cal. Sup. Ct.-1953); Erb, supra, (Ia. Sup. Ct.-1974)).

Professional Criteria and Rules:

Chapter three of commission criteria provides in part (Iowa Administrative Code, Professional Teaching [640]):

1. "A violation of any of the schools laws of Iowa constitutes a violation of [commission criteria]." (Rule 3.1 (1) (a)).

2. "Shall make reasonable efforts to protect the student from conditions harmful to learning or to health or safety." (Rule 3.3 (1) (c)).

3. "Shall conduct professional business in such a way that he or she does not expose the student to unnecessary embarrassment or disparagement." (Rule 3.3 (1) (d)).

4. "Shall accord just and equitable treatment to all members of the [teaching] profession in the exercise of their professional rights and responsibilities." (Rule 3.3 (3) (b)).

5. "The educator regards the employment agreement as a pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. He or she believes that sound professional personnel relationships with governing boards are built upon personal integrity, dignity, and mutual respect...(Rule 3.3 (4)). Shall adhere to the terms of a contract...(Rule 3.3 (4) (e)). Shall use time or funds granted for the purpose for which...intended" (Rule 3.3 (4) (2)).

6. "Shall not use institutional privileges for monetary private gain (Rule 3.3 (2) (d)).

Chapter four of commission criteria in part provide (Iowa Administrative Code, Professional Teaching [640]):

1. "[Chapter four] standards...are held to be generally accepted minimal standards within the teaching profession...with respect to competent performance...[P]rofessional incompetence is a ground for certificate revocation or suspension." (Rule 4.1). "[N]o finding of professional incompetency shall be made except where a preponderance of evidence exist." (Rule 4.2).

2. "Competent. The ability or fitness to discharge the required duties. Designated task. The duty or assignment for which the individual is responsible." Rule (4.4 (4) and (5)).

3. "Competent educators must possess the abilities and skills necessary to perform the designated task. Each educator shall: 1. Keep records...in accordance with laws and policies of the school district. 2. Supervise...students...in accordance with laws and policies of the school district... Each teacher shall: a. Use appropriate and available instructional materials and equipment necessary to...the designated task. b. Adhere to and enforce lawful policies of the school district which have been communicated" (Rule 4.5).

4. "Each competent educator shall seek accomplishment of the designated task through selection and utilization of appropriate procedures. Each educator shall: a. Create an atmosphere which fosters interest and enthusiasm for learning and teaching. b. Use procedures appropriate to accomplish the designated task... Each teacher shall: a. Create interest through available materials and techniques appropriate to varying abilities..." (Rule 4.7).

5. "Communication skills. ...use information and materials relevant to the designated task." (Rule 4.8).

6. "Management techniques. The competent educator shall:

1. Resolve discipline problems in accordance with law, school district policy and administrative policies... 4. Develop and maintain positive standards of student conduct." (Rule 4.9).

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7. "Evaluation of learning and goal achievement. A competent educator accepts responsibility...to evaluate learning and goal achievement, and...shall: 1. Utilize appropriate types of evaluation techniques" (Rule 4.11).

8. "Human and interpersonal relationships. Competent educators maintain effective human and interpersonal relation skills and therefore... 3. Shall not show disrespect for or lack of acceptance of others. 4. Shall provide leadership and direction for others by example... 6. Shall comply with requests given by and with proper authority... 8. Shall exercise discretion and reasonable judgement in use of authority" (Rule 4.12).

Rules of the department of public instruction in part provide (Iowa Administrative Code, Public Instruction [670]):

Rule 3.4 (14). Report of medical examination required prior to onset of teaching. Rule 3.4 (7) official transcripts of preparation of all teachers required.

Discussion

I

Muscatine has shown, by the necessary standard of proof, that from late August through November Blaskovich perpetrated or caused in excess of twenty professionally suspect acts or omissions. Citing incompetency, neglect of duty, insubordination, violation of laws and policies and other allegedly unprofessional practices, the district seeks removal from the teaching profession. We initially consider, in a general way, the remedy of certificate suspension or revocation.

Prior to passage of the Iowa Professional Teaching Practices Act (Chapter 272A, Iowa Code, 1967), a teaching certificate was suspendible or revocable on grounds relating solely to age and physical or moral fitness to teach (Sections 260.23 and 260.2, Iowa Code). The possible reasons for certificate involvement were expanded by the Practices Act which directed the commission to:

"Develop criteria of professional practices including, but not limited to, such areas as: (1) contractual obligations; (2) competent performance...; and (3) ethical practice toward other members of the profession [and] students..." (Section 272A.6).

Once adopted, a violation of the profession criteria carries a statutory presumption of unprofessional conduct and is a legal basis for decertification (Section 272A.6):

"A violation, as determined by the commission following a hearing, of any of the criteria so adopted shall be deemed to be unprofessional practice and a legal basis for suspension or revocation of a certificate..."

Accordingly, by operation of Chapter 272A the agency, through legislative rulemaking, defines the grounds for removal and on a case examination determines the existence of such grounds. The statute itself designates the proscribed practice as the legal basis for certificate loss. Obviously, not all (perhaps not most) criteria violations warrant serious consideration of removal. Those that do are statutorily referred to the board of educational examiners for discretionary disposition (Section 272A.6).

II

Prior to considering the relevance of our professional criteria to the instant case, it is useful to note judicial rulings and other principles concerning the legal consequences of alleged professional unfitness to practice education. The leading Iowa authority, reviewing state action denying the right to practice teaching because of adultery, holds that revocation must be related to "unfitness to teach." Erb vs. State Board of Public Instruction, 216 N.W. 2d 339, 343-344 (Ia. Sup. Ct.-1974):

"[U]nder Code Section 260.23, a certificate can be revoked only upon a...showing of a reasonable likelihood that the teacher's retention in the profession will adversely affect the school community."

The same principle was recently expressed by the New Mexico Supreme Court in denying that the state has power to:

"Revoke a teacher's certificate for any reason that is not related to the purposes of the Certified School Personnel Act, which purpose is to protect the public against incompetent teachers and to insure proper educational qualifications, 'personal fitness' and a high standard of teaching performance" State Board of Education vs. Stoudt, 571 p. 2d 1186, at 1189 (1977). While Erb involved the moral unfitness grounds of Section 260.23, it is likely germane to the exercise of suspension or revocation authority under the Practices Act.

Regarding teaching and teaching related conduct, decertification proceedings note that an educator is subject to reasonable administrative direction and restriction "so that proper discipline may be maintained and the teacher's conduct will neither disrupt nor impair the public service." Board of Education vs. Swan, 261 p. 2d 261 (Cal. Sup. Ct.-1953). Factors noted in a certificate revocation context include: "The likelihood...students and fellow teachers" suffered adversely and the "likelihood of recurrence of the questioned conduct." Morrison vs. State Board of Education, 461 p. 2d 375, at 386 (Cal. Sup. Ct.-1969). We add also the likelihood that the practice or conduct at issue constituted professionally ineffective teaching.

Where teaching certificate or termination liability is at issue because of incompetency, the evidence must show more than isolated incidents. Saunders vs. Board of Education, 263 N.W. 2d 461 (Nebr. Sup. Ct.-1978):

"Evidence that a particular duty was not competently performed on certain occasions, or evidence of an occasional neglect of some duty of performance, in itself, does not ordinarily establish incompetence or neglect of duty sufficient [for] termination."
(263 N.W. 2d at 465).

Insofar as liability for contract termination is statutorily grounded in ideas of teaching fitness, judicial principles announced in termination cases are material to issues of decertification. That termination is conceptually so grounded, appears from the recent case of Board of Education of Ft Madison vs. Youel, 282 N.W. 2d 677 (Ia. Sup. Ct.-1979), wherein at page 681 the Iowa Court quotes this with approval:

"[J]ust cause assumes facts which bear a relationship to the teacher's ability and fitness to teach and discharge the duties of his or her position."
Powell vs. Board of Trustees, 550 p. 2d 1112, at 1119 (Wyo. Sup. Ct.-1976).

"[It is] some substantial shortcoming which renders continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as good cause for his not longer occupying the place" Tudor vs. University Civil Service Merit Board, 267 N.E. 2d 341, at 343-344 (Ill. App.-1971).

Accordingly, we examine illustrations of teacher and administrator practices faulted in termination proceedings. In the Fort Madison case, supra, the Court sustained Youel's termination solely on grounds of: "improper handling of the football program resulting in deterioration of the program." (212 N.W. 2d at 682). Among other factors, Justice Le Grand mentioned the following items as supporting this finding (282 N.W. 2d at 683):

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"Youel's resentment took many forms. He neglected making reports; he postponed submitting roster lists; he was 'uncooperative'...in making certain the required physical exams were scheduled and taken..."

Youel was followed by Briggs vs. Hinton Board of Directors, 282 N.W. 2d 740 (Ia. Sup. Ct.-1979), wherein the administrator's termination under Code Section 279,24 was affirmed. The Court summarized the faults as involving: "the areas of teaching supervision, student discipline and decision making," which deficiencies were tagged "incompetency." (282 N.W. 2d at 743). The Iowa Court equates grounds for termination with professional unfitness to practice education (282 N.W. 2d at 743):

"[I]n the context of teacher fault a just cause is one which directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students. It relates to job performance including leadership and role model effectiveness. It must include the concept that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance. On the other hand, "just cause" cannot include reasons which are arbitrary, unfair, or generated out of some petty vendetta."

Drawing from other jurisdictions, Justice Le Grand, in Youel, supra, outlines numerous deficiencies resulting in termination, including failure to provide lesson plans for substitute teacher and leaving classroom unattended (Simon vs. Jefferson Davis Parish Board, 289 So. 2d 511 (La. App.-1974)); violation of board order by staying away from school (Yuen vs. Board of Education, 222 N.E. 2d 570 (Ill. App.-1966)); lack of control over students (Board of Education vs. Willis, 405 S.W. 2d 952 (Ky. Sup. Ct.-1966)); teacher refused to obey school administrator (Gilbertson vs. McAlister, 403 F. Supp. 1 (Dist. Ct. Conn.-1975)); teacher committed acts of insubordination (Horton vs. Board of Education, 464 F. 2d 536 (4th Cir. Ct. App.-1972)).

A lack of the knowledge required to be taught, as well as

the inability to impart such knowledge to one's students constitutes incompetency (Applebaum vs. Wulff, 95 N.E. 2d 19 (Ohio); Harner vs. Board of Education, 205 S.W. 2d 325 (Ky. Sup. Ct.)). Incompetency, is however, broader than subject matter inaptness; it may result from negligence in discharge of duties (Crownover vs. Alread School District, 200 S. W. 2d 809 (Ark. Sup. Ct.)); and has been held to include teaching related practices such as maintenance of school discipline (Guthrie vs. Board of Education, 298 S.W. 2d 691 (Ky. Sup. Ct.)), or the physical mistreatment of students (Houeye vs. St. Helena Parish School Board, 67 So. 2d 553 (La. Sup. Ct.)).

Insubordination is commonly grounds for discharge, especially upon refusal to obey school district rules and reasonable management directives (Board of Education vs. Swan, 261 P. 2d 261 (Cal. Sp. Ct.)). Taking leave of absences without the required eligibility therefore is grounds for discharge (Evard vs. Board of Education, 149 P. 2d 413 (Cal. App)), as is the failure to comply with reasonable state and local regulations, rules and policies (Blanchet vs. Vermillion Parish School Board, 220 Sw. 2d 534 (La. App.)).

Significantly, though a teaching practice or teaching related fault is not viewed per se as incompetent, insubordinate or the like, the cases impose professional liability where an educator's actions and conduct causes substantial friction and unrest and interferes with the smooth and effective operation of the school program. In such a case, not only is the educator reduced in his or her effectiveness but the entire educational effort is contaminated with obvious detriment to the students. For example, an educator who is continually insubordinate and refuses to recognize school authority may seriously affect discipline in the school, impair its efficiency through the example, teach students harmful lessons and consequently leave the educator unfit to teach even though the other qualifications are adequate (Board of Education of Fort Madison vs. Youel, supra; Board of Education vs. Swan, supra; cf. Erb vs. Board of Public Instruction, supra). Something approximating this disruption concept is reflected in the Youel narrative (282 N.W. 2d at 683-684):

"Youel's resentment took many forms. He neglected making reports; he postponed submitting roster lists; he was 'uncooperative' in reporting injuries and in making certain the required physical exams were scheduled and taken; he spoke out publicly, and sometimes in uncomplimentary terms, against both the superintendent and the athletic director; he made frequent public statements deriding his own players, sometimes individually, sometimes as a team; he refused to comply with suggestions from Nardini and others that he recommend how the football program could be improved; he repeatedly rejected suggestions with the response, 'Let Nardini do it'

or 'Let the administration do it.'

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"In the meantime, the football program deteriorated. The number who participated decreased and attendance at games declined. Neither was dramatic, but the decline, however insignificant in itself, came at a time when other sports prospered and gained in popularity and support. The record shows that the football program had reached an impasse.

"A job separation is seldom attributable to only one party. In the present case there is evidence to refute many of the conclusions reached. Youel disclaimed responsibility for any falling off of his program...

"We further hold Youel's conduct as football coach amounted to just cause for termination... The Board was not obliged to continue a situation which was disruptive, was harmful to the school's athletic program, and for which there appeared to be no alternative except to dismiss the one the Board found responsible for the continuing dissension. The fact that Youel may not have been totally responsible for all the ills does not mean his contract cannot be terminated. Faced with a situation in which bickering and bitterness held sway, the Board must have the final say as to how best to bring that intolerable state of affairs to an end as long as the action taken is within the provisions of the statute designed to meet that very problem."

III

Since this is a case of first impression under the Practices Act involving alleged teaching incompetency and relating issues, we note two principles that should be considered in all such cases:

First, as the result of many hearings prior to adopting Chapter four of our criteria (competent performance), we concluded that an educator might, in some circumstances, be incompetent or professionally unfit to practice in a specific local system but be able to perform elsewhere. Perhaps Fort Madison Board vs. Youel, supra, imperfectly illustrates the principle. Youel's classroom practice was not faulted and, as noted above, much of his professional problems in the football area arose from peer resentment. Accordingly, such facts under the Practices Act would require consideration of Youel's ability to perform in another district.⁴

4. Such consideration would seemingly involve only an issue of whether the coaching endorsement to the basic certificate would survive.

At any rate, this is a factor for commission attention as is all such cases.

Secondly, the majority of other jurisdictions with comparable Practices Act legislation have established a peer review program, the main goal of which is to evaluate and initiate remedial efforts to salvage educators whose performance is professionally unacceptable. This concept of remediation, while not reaching due process magnitude, is seen as a substantial and important value attaching to membership in the teaching profession.⁵ Though we have considered such a remediation procedure, it has, as yet, not been adopted. Accordingly, the commission is not positioned to deal potentially with competency and fitness issues at the most logical level--the site of ongoing teaching practice.

Nevertheless, we affirm that remediation or the potential of remediation is an important value implicitly recognized by the Practices Act and the issue is to be given careful consideration by the commission for appropriate action in decertification complaints charging incompetency, and related acts or omissions showing ineffective practice of teaching. Nothing we have said means that some kind of remediation efforts must be had in all cases; but if it is reasonably indicated the issue should be explored.

IV

Turning now to the teaching practices of Fred Blaskovich, we can find no single incident which, taken in isolation, warrants Chapter 272A certificate involvement. Moreover, given the serious issue of one's right to practice education, some of the transaction faulted are picayune. In any relationship, however, where the interaction is contaminated by continuous errant conduct, serious or petty, the relationship suffers. One is reminded of the poetic treatment of the statutory issue of cruel and inhuman treatment in a divorce appeal by the late Iowa Justice "King" Thompson:

"Water dripping
day by day; the strongest
rock will wear away."

Nor, in deciding the case, need or should we consider transactions in isolation. Insofar as the assigned faults are relevant to the core issue of professional fitness, the record must be viewed

5. By analogy, the Iowa Board of Medical Examiners are currently active in programs to salvage chemically errant medical doctors rather than revoking the doctor's right to practice.

as yielding an integrated response to that issue. Board of Education of Fort Madison vs. Youel, 282 N.W. 2d 677, 682 (Ia. Sup. Ct.-1979). So here, the record reflects numerous professional transgressions ranging from incompetency through securing district benefits by fraudulent misrepresentation and contrary to law. Each errant act or omission covered in our "findings" related relevantly to Blaskovich in his professional role. All integrate to project a person currently ineffective as an educator and professionally unfit to practice teaching.

Ineffective teaching performance as it relates directly to students and subject matter is but a part of the problem. The record reveals entrenched attitudes toward and responses to the entire school milieu which adversely affect Blaskovich's ability to cope with the vicissitudes of academia and which interfere with the orderly progress of the school community itself. While the record speaks more convincingly, we here approximate something of those attitudes as relating to the issue of appropriateness of professional conduct.

With the ink yet damp on our official reprimand consequent on his unprofessionalism in ignoring a promise to teach at Ar-We-Va, Blaskovich again flirted with our teaching criteria by "accepting" the Muscatine offer knowing his real intention and obvious desire was to accept, if offered, a job with the number one football power, Dubuque-Hempsted (cf. Rule 3.3 (4) (d); R. pp. 345-346). Accordingly, he retained the Muscatine agreement on pretext unexecuted until he was satisfied that it was the only "action in town." His preoccupation with and exaggerated value attached to a winning role in football relegates to second class citizenship the prime professional obligation--teaching. Thus, in order to follow up his 1979 football involvement at Genesco high, he made a material misrepresentation as to his health and he ignored his students and the pledge to teach them. In the face of a Muscatine discharge for teaching unfitness and after hearing the testimony here as to the various errant practices, respondent arrogantly dismisses it all by noting: "If the sophomore football team would have been 9-0, I would have been elected Mayor of Muscatine" (R. p. 362). In other words, as a Blaskovichian attitude football power is the crucial thing, in the presence of which issues of quality teaching are of little importance. There is further support for this observation in his rationalization that the demands of football prevented him from complying with state law as to evidence of medical examination (Rule 3.4 (14), Iowa Administrative Code [670]). At any rate, he doesn't see noncompliance as a "major problem" (R. p. 334--though it became significant when his pay was suspended). In summary, we conclude with a colloquy instigated by the presiding officer (R. pp. 372-374):

"Chairman Burgess: You keep saying 'I'm going to be a coach; I'm going to a school with a winning football team.'

x

x

x

"Burgess: If you had to be strictly a teacher, would you teach?

"Blaskovich: If I was older, yes. I want to coach right now...

"Burgess: If you could be only a coach, you'd give up teaching?

"Blaskovich: "If I was that good..yeah."

Football distractions aside, his approach to the profession, through inaptness or by design, resulted in numerous practices contaminating his effectiveness and professionalism and affecting adversely the school community. Illustrations follow:

1. Tardy compliance with state requirements relating to filing health reports, transcript and contract.
2. Engaging in acts officially proscribed involving physical plant keys and class change.
3. Unauthorized leave from assignment in violation of state law and district policy.
4. Noncompliance with district policy relating to teaching aids required for substitute
5. Noncompliance with administrative order to weekly furnish lesson plans.
6. Failure to respond or inadequate response to administrative order to submit football program player data.
7. Same as to sophomore recruitment letters and physical fitness testing requirements.
8. Conducting class in a fashion so as to disrupt the progress of other courses (see details below).
9. Willfully ignoring administrative orders by Waterman and Rettko to attend office conferences on specified dates at designated times.

Such acts and omissions and others unlisted (e.g., gym supervision and phone use), relate to the ultimate issue of professional fitness. For the greater part, however, their adverse impact on the goal of quality education is somewhat oblique. Accordingly, it remains to examine the prime role--teaching performance in a context of teacher-student interaction.

At the inception, is it not obvious that the craftsman be ever watchful of his materials to the end that they yield a desired product? Likewise, an educator, in creating a finely tuned and smoothly working intellect, has a grave responsibility to physically protect that wherein the intellect resides. Blaskovich on two occasions chose to ignore this serious responsibility: a) Without record dispute, respondent agreed to supervise a student undergoing hydrotherapy and forsook the lad leaving no one in attendance. The hearing evidence is convincing that a health risk is involved. b) From irritation and anger and in the absences of a legal privilege to defend, Blaskovich used physical force to precipitate Edward Failor against a concrete structure. The use of such violent force in light of the facts was clearly outside an educator's legal privilege to corporally punish. Hence, the act constituted assault and battery, a criminal and civil wrong.

Prior to focusing on the classroom, we note but briefly that the coaching practices, elsewhere outlined, reflect substantial incompetency. Further detail seems not required; res ipsa loquitur. But see, Board of Education of Fort Madison vs. Youel, supra, where the same or analogous practices were condemned by the Iowa Court. Such involve our professional criteria above.

Though minor, the graft paper incident showed an inceptional propensity to disregard the required course of study and revealed poor judgment as to current student abilities to cope with the stock market. Consumer economics did not include stock market analysis and, at any rate, prerequisite study is required. Blaskovich did not controvert this issue.

Teaching profession members must comprehend and be able to use various evaluation techniques, including standardized tests prescribed by law or local authority. Shortly prior to its use, Blaskovich was schooled as to execution of the ITED. His part was hardly complicated; he need only preside over one 5 minute problem and one of 30 minutes. He gave the short and ignored the longer, explaining to his principal he was unaware of involvement with the other. At our hearing he conceded these facts (R. p. 342). The failure to understand and carry out required student evaluation is serious and involves our competency criteria above.

Turning to the nine-week grading issue, consider two hypotheticals: Jack, having slept through nine weeks of class, hires Jill of notetaking fame to provide a typed copy of notes. Conversely, Jim, a gifted student with exceptionally perfected rote abilities, shuns notetaking as utterly useless. Keeping to the record, Jack likely gets an "A" though his knowledge of supply-demand is limited to his "demand" on Jill and her "supply" to him. Jim, lacking criteria to evaluate, bombs out. Obviously, agency standards and universal teaching practice require the use of evaluation techniques which meaningful measure knowledge, progress, potential and shortcomings. We do not intend to intimate that notes can never be

relevant to the evaluation process (consider e.g., their use as reference material for essay problems), but such use here was clearly improper. It is especially distracting that a teacher would evaluate neatness of script as yielding something of one's comprehension of the issues under study. Respondent's evaluation technique suffers professionally and involves our competency criteria above. Because the record contains scant reference to a quiz or quizzes, a further word is in order. As the result of a student complaint about grading on notes, Rettko says that the teacher admitted the practice and that the grades were assigned alone on notes evaluation. Blaskovich was examined as to the issue on direct, through cross and by the commission. He made no effort to refute the Rettko-Blaskovich charges to our legal advisor.

A considerable amount of hearing time involved issues relating to respondent's lesson plans for consumer economics. For one thing, Blaskovich failed to comply with a September Rettko order that he furnish weekly plans for review. Secondly, he also failed, as required by district policy, to have lesson plans and other data available to a substitute on November 5, 1980. The important inquiry, however, is the professional effectiveness and quality of those plans to assist teaching performance.

Respondent's exhibit "A" is seemingly a copy of all lesson plans prepared to assist Blaskovich with daily course progress. Upon careful review of content, we find them inadequate as an effective aid for his or a substitute's use. An educator's task is to orchestrate an atmosphere that permits and encourages learning. The process must accommodate for the varying competencies of each student. Course materials are to be presented in a manner so, at a minimum, each student can comprehend the content of course objectives and be able to demonstrate application of those objectives. That goal does not even address the higher levels of thinking such as analysis, synthesis and evaluation (cf. Bloom's Taxonomy, Longman-1977). Assuming these lesson plans demonstrate, even in exaggerated brevity, something of how Blaskovich approached the course, we question seriously whether the students could comprehend or make effective use of the concepts in life situations. Due to subject matter ineffectiveness and failure to deal at all with important objectives, the exhibit raises obvious issues. For example: What was done respecting pretesting of concepts? Were various strategies employed to compensate for differences of student learning styles? Could all students actually read the course text? What was done to cause students to demonstrate course objectives? Assuming Blaskovich taught in accordance with the tenor of these plans, weren't the students prepared essentially only for rote activity and verbal recall? Finally, did the instructor remediate? In our opinion, the plans fail to respond to these most relevant factors, which professionally he was obligated to incorporate in teaching performance. At best it appears his charges were adversely limited to little more than reading the text, notetaking and watching films.

Save for the issue of student control and discipline, the major performance issue concerns the question of whether Blaskovich could, and if so, did teach the substantive principles of the course. In this respect, he was obligated, at least in substance, to follow the course of study prescribed by local direction. Apart from any such prescription, he had a professional duty in common with all educators to teach those principles, concepts and issues acknowledged as universally applicable to a given area of study. The teacher suffered shortcomings as to both responsibilities. Economics chairman Sturms testified that based upon his experience with and review of the instructor's performance, he noted the base concept of "supply and demand" was not taught; that such was also the case with the elements of "production" and "consumer agreements"; and that substantive issues covered late in the course were considered too early for effective learning. Moreover, respondent, neither through cross nor during his case, confronted these assertions and, indeed, lent them support (R. pp. 373-375):

"Chairman Burgess: There was a lot of testimony about how you did not follow the course of study. Did you follow the course of study?

"Blaskovich: It was really difficult for me to follow the course of study in the order he [Sturms] wanted it done... I couldn't have taught consumer economics the way Ron does, because I don't have time to go through and develop, you know, units, and write units and, you know, things like that for the students....

"I went through the book. We covered the first four chapters just straight away, and then we'd skip around in the book. We'd cover a unit on banking, cover a unit on investments, cover a unit on insurance. And everything I taught was consumer economics, but it was--for me, it had to be from the textbook, looking at my own abilities.

"Burgess: In one year's time I can see where you wouldn't be able to design your own course, But did you, in that 13-week period, design a unit or lessons that would go along with a unit, that would be building toward that goal?

"Witness: Work toward the schedule that he developed? I didn't have time in my 13 weeks to do that..."

At another point, he complained to his counsel that teaching resources for the course were limited and because of "the coaching responsibilities" he lacked "time to write a course" (R. p. 340; emphasis added). The issue as to subject matter competency is not without its problems. We know little of what respondent did teach. We are convinced, however, that he neither adequately nor

effectively covered the important issues mentioned by Sturms. The presiding officer's inquiry as to coverage of course principles, called forth essentially a negative response, at least far from a lucid demonstration as to how they were taught. Indeed, the common theme is what could not be done for lack of time. We are satisfied that respondent's subject matter performance was incompetent and contrary to our criteria. Any lingering reservations on the issue, dissipate with the next topic.

The issue of teaching performance per se is not very relevant to a class lacking in student control or discipline. The most eloquent delivery of King Lear's grief leaves untouched the scholar attending the Register's sport page. Moreover, noisy and disorderly scholars not only fail to learn but infect others nearby and down the hall with like shortcomings. The risk of such learning disruption is obviously enhanced if the teacher departs the room now and then to transact personal business. Such conduct carried to extreme can also endanger the loss of services to the school of long valued staff.

The evidence reveals that throughout a substantial period of time respondent failed to maintain proper student control and discipline, ranging from permissive nonproductiveness to rowdy behavior. Sturms, frequently noted the lack of relevant activity in consumer economics, students unoccupied and respondent sometimes reading the paper. He also testified that he and his students were often subjected to loud noises emanating from respondent's room. Rettko said that at various times he noted student activity caused them not to be situated for class until five or ten minutes after the bell. Sturms and others complained that the entire Thanksgiving week (November 23, 24 and 25) was unusually bad with student disruption and noise.

Thanksgiving eve served up the climax. Blaskovich hosted a consumer economics game frolic, the disruption and noise of which staff tagged "unbelievable". For relief, school staff closed respondent's doors only to have them reopened, of which Blaskovich was aware (approved?). The economics chairman, who complained of noise earlier that week, became so distracted by this "mockery of education" that he proffered his resignation. When Rettko responded to staff outcry, respondent provided an encore by having his remaining class demonstrate "free time", i.e., visting, reading papers or doing nothing. Rettko's order to come to the office was ignored.

Reasonable student control and discipline is the sine qua non of effective teaching performance and an absolute predicate to learning. If it is substantially lacking for an appreciable period, so also is lacking fitness to teach. In this case, Blaskovich was substantially so lacking, which failure seriously interfered with his teaching effectiveness and caused discord in the school.

We conclude our discussion as to how we and others have perceived Blaskovich through personal observations. As we have already noted, the early evaluation by Muscatine administrator Herwig is unremarkable and has little relevance to the issues at hand. Rettko's October 2, 1981 evaluation depicts a relatively effective educator which is at odds with the composite represented throughout these many pages. That evaluation speaks for itself and we have considered it with all the evidence. We only note further that the teacher had seven day's notice of the visit and the greater number of serious errors predominate from mid-October on (e.g., evaluation of notes; Edward Failor incident; control and discipline problems; and insubordination incidents). The unsworn statements from prior employers must be viewed in light of respondent's grudging admission to commissioner Smeltzer that he had also been fired a couple of times. While those statements are in the record for whatever their worth, our experience has vividly shown that a reference is not always as it seems (Lewis Central Educational Association vs. Miles, case 80-13, Jan. 8, 1981; subsequent to knowledge that the school principal twice misappropriated school funds; administrator allowed to resign and was told that the transgressions would be related to potential school employers only upon specific inquiry).

It is not a pleasant thing to criticize an educator's defense efforts before us at a hearing. Some comments are necessary. Though it is not entirely clear from the record, it was not intended that Blaskovich would take the stand and testify. Attorney Madden chose, for whatever reason, to call him, whereupon it was agreed that attorney Mannheimer proceed. The entire commission panel were affected negatively by his demeanor and deportment as a witness. There were some problems with creditability in giving accurate testimony, though this may have been due more to constitutional disorganization than to intended breaches of veracity. He had a tendency to assert a point, subsequently deny it, but reaffirm it when pressed (see R. pp. 344, lines 1-4, p. 346, lines 3-17; see also R. p. 367, lines 6-17; and R. p. 357, lines 3-15). The more significant thing about his approach which impressed the commission negatively was Blaskovich's inability to see the seriousness of complainant's charges, pointing instead to simplistic excuses as shown by the following:

"All things considered, I think the whole procedure has been pretty unfair. I don't think they had a good reason for even my suspension..." (R. p. 332)

"[Regarding the Edward Failor football assault], I personally think that the main reason why I'm setting right here is simply because of the situation that happened in football, more so than anything else, and the pressure that precipitated after that." (R. p. 332)

"[Having articulated some 13 of the Muscatine charges, commissioner Paulsen inquired if these matters were not serious] Blaskovich: If the sophomore football team would have been 9-0, I would have been mayor of Muscatine. And...there has to be more to, you know, complaining about all these little things that went on, than just what happened" (R. p. 362).

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VI

Consequent on the teaching practices and related acts and omissions designated in our "findings," we hold that Blaskovich violated each and every Chapter 272A professional criteria listed under "legal conclusions." He also was in noncompliance with the state department's rules listed thereunder and he came into conflict with provisions of state law (e.g., public employee sick leave legislation and assault and battery proscription) and local rules and policies (e.g., medical report policy; student discipline rules; sick leave policy; provision for substitute policy; and requirements, course of study). This holding generates the statutory presumption of unprofessional practice and is the legal basis for suspension or revocation action.

All objections, motions or other hearing matters requiring ruling by the presiding chairman which may not have been resolved are hereby overruled or denied.

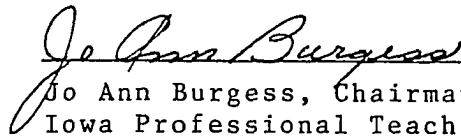
Decision

Respondent's teaching performance and other professionally related conduct reflects that he is currently professionally unfit to practice education. At our conference, we consumed a fair measure of time on the issue of whether the problem might be situational and adequate performance had in another district. We all concluded that the infirmities would continue with little relevance to any particular school community. In our opinion, if the respondent is to be permitted a future opportunity to show that he is once again eligible and professionally fit to teach, he must do so de novo from outside of the teaching profession and in accordance with whatever reasonable showing requirements the state may impose. We here forego any effort to detail any such showing procedures as such rests more properly with the board of educational examiners.

Accordingly, the commission unanimously decided to take action under Section 272A.6 of the Practices Act to cause either the indefinite suspension or revocation of respondent's teaching

certificate. While either remedy is essentially the same in operation, the separate Section 272A.6 referral document to the board will specify the precise certificate action warranted.

Dated August 3, 1981



Jo Ann Burgess, Chairman,
Iowa Professional Teaching
Practices Commission

IOWA STATE BOARD OF
EDUCATIONAL EXAMINERS

(Cite as 1 D.P.I. Dec. 124)

In the Matter of :
 Fred Blaskovich :
 :
 Teaching Certificate : DECISION
 :
 Number 171594 :
 : [Admin. Doc. 604]

The above entitled matter was heard on February 22 and 23, 1982, by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Mrs. Mavis Kelley, chief, federal programs section; and Mr. Bill Bean, chief, educational equity section. Dr. David Alvord, consultant, data analysis and statistical section, served as the Advocate. Fred Blaskovich was present and presented evidence and oral argument on his own behalf. The Complainant, the Muscatine Community School District (hereinafter District), was represented by Attorney Patrick Madden. The hearing was held pursuant to Section 272A.6, The Code 1981, and Chapter 670--50, Iowa Administrative Code.

The Iowa Professional Teaching Practices Commission (hereinafter Commission) found that Fred Blaskovich violated its rules related to professional conduct and recommended that a hearing be conducted by the State Board of Educational Examiners and at the conclusion thereof, the teaching certificate of Fred Blaskovich be indefinitely suspended or revoked.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Educational Examiners have jurisdiction over the parties and subject matter involved in the hearing.

Fred Blaskovich holds an Iowa teaching certificate (No. 171594) which expires on June 10, 1984. He began teaching employment in the 1974-75 school year at Aquin High School in Freeport, IL. He subsequently taught at St. Johns High School, St. Louis, MO (1975-76); Union-Whitten High School, Union, IA (1976-77); English Valleys High School, North English, IA (1977-79); Geneseo High School, Geneseo, IL (1979-80); and Muscatine High School, Muscatine, IA (1980). It is the last of these employment circumstances which gives rise to the issues before the Hearing Panel.

During the summer of 1980, Mr. Blaskovich negotiated with the District for a position as teacher of consumer economics and sophomore football coach and was offered a teaching contract for the 1980-81 school year. Apparently, Mr. Blaskovich continued to look for what he thought was a better opportunity and delayed signing the contract in the time specified on it. He was subsequently contacted by members of the District administrative staff and was ultimately persuaded to enter into a contract with the District to teach high school consumer economics and coach the sophomore football squad.

During his employment with the District, Mr. Blaskovich was formally observed by the District's administrative staff on September 10 and October 2, 1980. Neither report of observation, made with seven days advanced notice, was overly critical and both contained favorable comments.

However, almost from the beginning, Mr. Blaskovich had difficulty complying with and perhaps understanding the work and attitude demands of his supervisors, especially those of Ronald Sturms, chairman of the Business Education Department. On numerous occasions Mr. Sturms; Steven Waterman, District Athletic Director; and William Rettko, High School Principal; met and counseled with Mr. Blaskovich in efforts to direct him in his employment performance. Often times, Mr. Blaskovich failed or neglected to heed the direction, counsel or advice he received from his supervisors.

The matter came to a head on November 26, 1980, after only three months employment in the District. After receiving a report on that day that Mr. Blaskovich's sixth period class was noisy and disturbing surrounding classrooms, Mr. Rettko proceeded to Mr. Blaskovich's classroom and observed the class involved in a stimulating game of "Password" utilizing economic terminology. Mr. Rettko reprimanded Mr. Blaskovich for disturbing other classes and directed him to report to the principal's office immediately after school. Mr. Blaskovich neglected or refused to comply with Mr. Rettko's directive.

Because of the intervening Thanksgiving recess, the next school day following November 26 was Monday, December 1. On that day Mr. Rettko met with Mr. Blaskovich and District Superintendent Arthur Sensor and discussed Mr. Blaskovich's failure to meet with Mr. Rettko the previous November 26 as directed by him. At the conclusion of the meeting, Mr. Blaskovich was notified that he was suspended from his employment duties pending termination proceedings before the District Board. A termination hearing was had before the District Board on December 22, 1980, but Mr. Blaskovich declined to attend the hearing. The District Board voted to terminate his employment with the District effective December 22.

On January 29, 1981, the District filed a complaint with the Commission alleging that Mr. Blaskovich had violated standards of professional conduct established by the Commission. On May 8, 1981, a hearing was had before the Commission with Mr. Blaskovich present and represented by an attorney.

On August 3, 1981, the Commission issued a ruling finding Mr. Blaskovich in violation of Commission criteria of professional conduct and recommended that the State Board of Educational Examiners hold a hearing, and after which, cause Mr. Blaskovich's teaching certificate to be indefinitely suspended or revoked. The ruling of the Commission clearly indicated that it felt Mr. Blaskovich's shortcomings could be remediated but left the determination of appropriate remediation to the Board of Educational Examiners. (page 30)

The Commission based its findings on a series of nearly twenty incidents of varying degrees of professional misconduct. After reviewing the record of proceedings before the Commission, and after nearly two days of hearing before us, the Hearing Panel finds that the following items of alleged misconduct on the part of Mr. Blaskovich were substantiated on the record in that specifically:

1. He failed to follow the prescribed course of study, even when reminded by supervisors to do so;
2. He failed or neglected to turn in lesson plans to the principal as directed;
3. He failed to properly supervise a thirty minute segment of the Iowa Tests of Educational Development;

4. He was insubordinate in refusing or neglecting to meet with the principal as directed on November 26;
5. He was insubordinate or negligent in failing or refusing to carry out assigned duties associated with his coaching assignment, e.g., letters to prospective participants, contest program preparation and completion of physical tests of athletes;
6. He left a student unattended in a whirlpool after agreeing to supervise the student in the absence of another staff member;
7. He failed to attend meetings regarding a student disciplinary incident as directed by a supervisor;
8. He acted out physically in anger at a student who may have verbally provoked him during half-time activities with his football team in a locker room;
9. He disregarded instruction of supervisors to not give keys to locked school facilities to students;
10. He failed to provide required information for a substitute teacher;
11. He failed to follow District policies with regard to his grading practices.

II.
Conclusions of Law

Chapter 272A authorizes the Commission to establish criteria of professional conduct and to take disciplinary action against certificated professional educators who violate those criteria. The criteria relevant to this proceeding are found in Chapter 640--3 and 4 of the Iowa Administrative Code. The relevant portions of those criteria are as follows:

3.3(1) Principle I -- commitment to the student. . . . In fulfilling his obligation 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 he does not expose the student to unnecessary embarrassment [sic] or disparagement.

* * * * *

3.3(3) Principle III -- commitment to the profession. The educator believes that the quality of the services of the education profession directly influences the nation and its citizens. He therefore exerts every effort to raise professional standards, to improve his service, to promote a climate in which the exercise of professional judgment is encouraged, and to achieve conditions which attract persons worthy of the trust to careers in education. In fulfilling his obligation to the profession, the educator:

* * * * *

B. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities.

* * * * *

4.5(1) Competent educators must possess the abilities and skills necessary to perform the designated task. Each educator shall:

1. Keep records for which he or she is responsible in accordance with law and policies of the school district.
2. Supervise district students and school personnel in accordance with law and policies of the school district.

* * * * *

4.5(2) Each teacher shall:

- a. Utilize appropriate and available instructional materials and equipment necessary to accomplish the designated task.
- b. Adhere to and enforce lawful policies of the school district which have been communicated to the teacher.
- c. Use available channels of communication when interacting with administrators, community agencies, and groups in accordance with school district policy.

* * * * *

640--4.9(272A) Management techniques. The competent educator shall:

1. Resolve discipline problems in accordance with the law, school district policy, and administrative regulations and policies.

* * * * *

640--4.12(272A) Human and interpersonal relationships. Competent educators maintain effective human and interpersonal relations skills and therefore:

* * * * *

3. Shall not show disrespect for or lack of acceptance of others.
4. Shall provide leadership and direction for others by appropriate example.

* * * * *

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

* * * * *

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

Section 272A.6, The Code 1981, provides that criteria promulgated by the Commission may, upon a finding of a violation, be used by the Board of Educational Examiners as a legal basis for the suspension or revocation of a teaching certificate. The last sentence of the first paragraph of that Section reads as follows:

A violation, as determined by the commission following a hearing, of any of the criteria so adopted shall be deemed to be unprofessional practice and a legal basis for the suspension or revocation of a certificate by the state board of educational examiners.

The Hearing Panel finds that Fred Blaskovich has, by his conduct, violated the above stated criteria of the Commission and thus, subjected himself and his professional standing to disciplinary action by the Commission or the State Board of Educational Examiners. The Hearing Panel finds that while the eleven enumerated incidents of nonprofessional conduct may not individually show a sufficient lack of professionalism to warrant a severe penalty such as suspension or revocation of a teaching certificate, together they have a cumulative effect which cannot be easily overlooked. Mr. Blaskovich, while not exhibiting incompetency in the traditionally accepted sense of totally inadequate ability and inappropriate classroom performance, certainly does call into question his effectiveness as an educator. His lack of ability to understand and respect the needs of supervisors, fellow teachers and students in the educational setting is very apparent on the record.

However, neither we, nor apparently the Commission, feel that Mr. Blaskovich is a lost cause without hope of remediation. We feel that on the record before us the Commission summed up the situation very well on page 23 of its decision when it said that Mr. Blaskovich is "a person currently ineffective as an educator and professionally unfit to practice teaching." [emphasis added]

All motions and objections not previously ruled upon are hereby overruled.

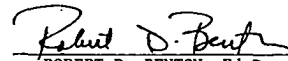
III. Decision

The Hearing Panel finds that the teaching certificate of Fred Blaskovich be suspended from the effective date of this decision until June 30, 1984. The Hearing Panel sincerely hopes that Mr. Blaskovich will utilize the time of suspension wisely in assessing and improving his skills, abilities and especially his attitudes as a professional educator. Surely the education profession in Iowa will continue to demand the respect it does only so long as its members strive toward high professional goals.

IV Note in Finality of Decision

The proposed decision shall become final, if not reviewed upon the motion of or appealed to the State Board of Educational Examiners, within thirty (30) days of the issuance of this proposed decision.

May 3, 1982
DATE


ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT AND
PRESIDING OFFICER

IOWA STATE BOARD OF EDUCATIONAL EXAMINERS

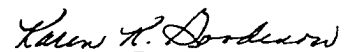
(Cite as 1 D.P.I. Dec. 124A)

In the Matter of	:	
Fred Blaskovich	:	
Teaching Certificate	:	DECISION
Number 171594	:	
	:	[Admin. Doc. 604]

On May 3, 1982, a hearing panel established by the State Board of Educational Examiners rendered a proposed decision in the above entitled matter. On May 21, 1982, the Muscatine Community School District filed an appeal of the proposed decision, and on June 2, 1982, Fred Blaskovich also filed an appeal of the proposed decision. The matter was set for oral argument and heard before the State Board of Educational Examiners on June 10, 1982.

After hearing oral arguments of the parties and reviewing the matter, the State Board of Educational Examiners voted on June 10, 1982, to affirm the proposed decision and deny both appeals.

June 11, 1982
DATE


KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATIONAL EXAMINERS

APPENDIX O. IPTPC HEARING RECORD 78-8

Iowa Professional Teaching
Practices Commission

Plainfield Education)	
Association By Kay Shook,	)	Case 78-8
Complainant)	
)	
vs)	
)	
David Lau, Superintendent,	)	Hearing
Plainfield Community Schools,	)	Decision
Respondent)	
)	
)	
)	

Statement of Case

The instant proceeding, the subject matter of which is allegedly un-professional acts and practices occurring during the 1976-1977 and 1977-1978 school years, was filed on June 1, 1978. In response to our request concerning allegation specificity the complaint was amended on July 3, 1978. In keeping with Rule 2.5(1) (Iowa Adm. Code, Professional Teaching, Vol. 2) the initial inquiry was concluded on September 16, 1978, at which time respondent Lau furnished an informal response to the complaint. Under date of September 22, 1978, upon report and recommendation of our legal advisor, the proceeding was considered by the commission on the issue of probable cause for an evidential hearing under Section 272A.6 and Chapter 17A of the Code. Since Mr. Lau's informal response contained some five or six items allegedly supporting dismissal, the same were treated as a motion for that purpose; each item was discussed separately; and by a vote of 9-0 the motion was overruled. Because some of these grounds have been raised anew in later pleadings and upon agreement with Lau's attorney the "motion to dismiss" will be considered and disposed of immediately following the division labeled "Jurisdiction". The commission also voted 9-0 to set the proceeding for hearing on November 13, 1978, the hearing being limited to the five issues set forth in the hearing notification to the parties.

Subsequently, the respondent's answer was filed and his interrogatories answered. The matter came on for hearing on November 13, 1978, at 10:00 a.m. Mr. Jim Sayre, attorney, Des Moines, represented complainant, and Mr. Gaylen Hassman, attorney, Waverly, represented Mr. Lau. The hearing was concluded about 3:30 p.m. on November 14, 1978. All objections to evidence or procedure not previously ruled upon or expressly considered hereinafter are overruled.

Jurisdiction

David Lau is a member of the teaching profession as that term is defined by Section 272A.2 of the Code. The complaint is brought by Mrs. Kay Shook, a certified teacher, on behalf of the local association. See Rule 2.4(1)(a), Iowa Adm. Code, Professional Teaching, Vol. 2. The subject matter is the commission of allegedly unprofessional practices in violation of Chapter 272A and our professional criteria. Accordingly, we have jurisdiction.

Motion To Dismiss

As previously noted, the informal response and later the answer set forth several grounds for dismissal. While the efforts were overruled prior to granting a hearing, we agreed to consider the matter anew as part of this decision. This action for the most part addresses legal points and does not concern the evidence adduced at the hearing. Indeed, as to a motion such as this the rule is that well pleaded facts are deemed true. The grounds for dismissal and our rulings thereon follow:

1. Alleges a rule 2.3 (4) jurisdictional defect in that no efforts were made to solve the matter at the local level. The complaint on its face alleges such efforts and the initial inquiry produced evidence of some. More importantly, however, rule 2.3(4) precedes adoption of the Iowa Administrative Procedure Act, Section 17A.10 of which encourages informal settlements but precludes the denial of agency procedures based on failure to resort to informal settlement efforts. Overruled.

2. Alleges dismissal for reasons of issue remoteness. This proceeding was instigated in early June 1978 and as narrowed by our order concerns three issues arising in the spring of 1978 and two others which seemingly have a relevant nexus to the 1977 and 1978 portions of those school terms. Chapter 272A and Chapter Two of our rules contains no subject matter time limitation on actions though as a matter of discretion a truly remote claim will not be heard. However, some 95% of our decided cases involve allegedly unprofessional practices occurring during the last or last two school terms preceeding the complaint. Under our practice a complaint need not be filed immediately following the event. Overruled.

3. Alleges dismissal warranted in that complainant, PEA, does not endorse complaint. A comparable contention of the answer is framed as a lack of standing. Respondent's own informal response notes that a substantial majority of the association present and voting (12 of 19) commenced this action. Moreover, Mrs. Shook or Larry Stewart or any of the other complaining teachers had standing and could have commenced the proceeding in their own right. Overruled.

4. Alleges dismissal for lack of specificity. Civil and administrative actions re not subject to dismissal for lack of allegation specificity. The proper motion is to make specific. At any rate, the five issues for hearing are sufficiently specific. Overruled.

5. Alleges a Rule 2.3(2) and (3) defect in that the alleged charges are not serious or supported by sufficient evidence. Charges, for example, of wrongful and bad faith action to terminate or to wrongfully censor student material are very serious. As to lack of substantial evidence, all nine members of the commission found probable cause for a hearing, i.e. found sufficient evidence to warrant evidential consideration of five issues embraced in the complaint. Overruled.

6. Alleges jurisdictional defect in that charges do not relate to commission rules and criteria. In granting a hearing the commission infers that if the charges are supported commission rule violation follows. While it is ultimately for the commission to determine from the evidence what, if any, rule or rules involvement exist, any one of the five issues in our order present potential rule involvement. Overruled.

Accordingly, the motion in its entirety is overruled. This ruling does not dispose of respondent's motion to dismiss at the close of the complainant's evidence. Ruling on that motion was deferred pending receipt of all the evidence and such ruling appears elsewhere in this decision.

Statement of Facts and Evidence

Background: Replacing a chief administrator of long years, David Lau took control of the Plainfield school district in August of 1976. His staff consisted of approximately twenty-seven certified professionals and a school administrator, principal William Cook. The respondent asserts that upon his selection the board noted that the district was in need of much work and that changes were indicated. Shortly thereafter, Mr. Lau seemingly discovered a relatively high failure rate in the district and assigned this area for priority study, work and change. Early in the 1976 term, the respondent advised principal Cook of his apprehension that grading practices and application of academic standards may, in certain cases, be too rigid and produce arbitrary and unfair results for the student less scholastically endowed. In addition to directing Cook to study this area for change, Lau issued a position paper probably dated in early December (stipulation exhibit "G"). Staff meetings were also conducted to explore the area.

The suggested grading and standards evaluation produced conflict within the district, the respondent noting that some of the staff accused him of efforts to undermine a district that for many years had enjoyed a good academic reputation. Others, like Larry Stewart, insisted their practices conformed to and were required by board policy. As the result of this resistance, Mr. Lau concluded that he "was not getting the help or support from the high school principal that was needed"; that Cook "was too close to his staff members . . . and would not help alleviate the problems"; and that for this and other reasons Cook's termination was desired. (p. 3,

informal response).¹ The record reflects some staff division over the Cook termination with several teachers (including some complaining parties here) supporting the principal. There are also allegations in this case that Cook support resulted in reprisals by Lau, as for example its alleged part in the overall Stewart termination episode.

At the inception of the 1977 school year new or additional study hall assignments were imposed on the staff, seemingly resulting from the lack of a principal following Cook's termination. The record reflects that the additional assignments were performed by some of the complaining parties under protest. In February of 1978 Joseph Dripps was appointed principal and during that month or within the following forty-five days the remaining events at issue either occurred or came to conclusion: 1. Virginia Haa, student teacher, commenced program February 1978; 2. Staff election and vote on issue of change over to Bankers Life - mid February; 3. Notice to terminate Larry Stewart - March 10, 1978; 4. Activity by Lau culminating in staff extra duty assignments - March 13, 1978 and; 5. The spring resignations of fifteen teachers, about which an initial news article by students was modified and subjected to deletions as the result of administrative action - mid April 1978. Finally, several of the staff members who resigned in 1978 allege that they did so as the result of one or more of these enumerated acts or actions of the superintendent.

Student Teacher: On February 13, 1978, Virginia Haa, a Wartburg teacher preparation student, commenced an assignment at Plainfield covering a three week period and ending on March 3, 1978. Her supervising professor was R. W. Stedtfeld (stipulation exhibit "A") and the internship was to be under the classroom supervision of Mr. Adams, the high school English instructor. At or about the time of Haa's arrival, Mr. Adams was seriously ill and no longer available to supervise the English program. While the record contains inferences that the Plainfield administration and Wartburg discouraged Ms. Haa from proceeding (stipulation exhibit "A" and V. Haa cross examination), Mr. Lau has stated that despite the problem in finding substitutes he was happy with Ms. Haa and would like to keep her (informal response, p. 7). Ms. Haa testified at the hearing that she wanted to continue and that she made a commitment to do so when the superintendent told her that substitute teachers would be obtained.

The hearing stipulation concedes that Ms. Haa, for a portion of the three weeks, "did teach courses in English without a certified teacher being physically present." Without resolving the various disputes as to Adams being present and the number and length of substitutes, a fair reading of the entire record indicates a position by complainant of eight days and for the respondent five to six days. While not claiming physical presence in the classroom or daily conferences to discuss subject matter and teaching procedures, Mr. Lau contends the student teacher had supervision in the person of principal Dripps, seemingly an English major. The contention is perhaps that Dripps was always potentially available for supervision. Ms. Haa testified that her contacts with Mr. Dripps were minimal.

¹In the spring of 1977, in H.F. '1582 proceedings, an IPTPC hearing officer found no just cause for termination. At the time of this hearing, the Cook proceeding was pending judicial review in the district court.

Student Publication: Subsequent to the 1978 staff resignations, Julie Deitz and other unidentified Plainfield students prepared a brief article commenting on the event. The work as initially prepared is substantially illustrated by complainant's exhibit "V", an April 21, 1978, PHS Hi Lites Publication with penciled notes. The original headline read "A great loss for PHS" and the body contained a notation to the effect that 109 years of teaching experience was involved. As reflected by stipulation exhibit "B," the designated portions of the original were deleted. Mrs. Metz, who was the publications sponsor, testified the paper was to be processed in the offset facilities located at the offices of the superintendent.

Mr. Lau states that the publication caught his eye and did concern him. He said that the multiple resignations had caused much bitterness and confusion within the district; that some of the teachers were using the media to attack him and the district; and the media was even coming to the campus and causing disruption. The respondent asserted that as he was reviewing and thinking about the student article principal Dripps happened by, at which time he showed it to Dripps and expressed his concerns. Lau specifically denies that he requested or ordered Mr. Dripps to see that the article or portions thereof were not published. As Mr. Dripps was leaving "I simply said you handle it."

Mr. Dripps testified that during the visit with Lau the latter expressed some apprehension about the title of the article. Stating that he had reservations about the propriety of the story, Dripps said he decided to take remedial measures partly in response to Lau's actions and partly on his own. At any rate, he caused a conference to be held with student Julie Deitz, whom he said was emotional and in tears upon arrival. Mr. Dripps noted that following some discussion and explanation, Julie agreed to the deletions. Mrs. Metz testified that a short time later the subject came up in Mr. Lau's presence, at which time Lau stated that he has the authority to decide what will and what will not be published in the district. Mr. Lau denies any such statement.

Bankers Life Ins: Upon the superintendent's arrival at the district employee health insurance was provided by a group policy written by Blue Cross-Blue Shield. Partially predicated on an opinion as to district savings, Lau expended efforts during the 1976-1977 term as to whether it would be appropriate to transfer coverage to Bankers Life Company. The issue encountered staff resistance and apparently received no further attention that term. The respondent testified that Blue Cross notified him that as of March 1, 1978, the cost of coverage would increase per single member by \$9.30 per month which is paid by the district. In February 1978 Bankers Life Company provided the staff with a program as to its coverage and Mr. Lau asserts that the Company stressed that coverage under their group policy would provide substantially comparable benefits to Blue Cross. It is also said that assurance was given that preexisting conditions would present no problems. Some of the complaining parties, however, state they were very apprehensive about changing and not at all sure they were getting comparable coverage or that preexisting problems were adequately covered. At any rate, the superintendent caused an election to be held on the issue of changeover. A substantial majority of the staff voted to retain Blue Cross. Subsequently, the school board took action to

transfer to Bankers Life effective March 1, 1978. The complaining parties contend the appearance of the democratic election procedure was just a sham and the superintendent had no intention of abiding a majority vote if it was against his wishes. They also note that, in fact, problems did develop with the new coverage, citing an ambulance charge for Mr. Mills and a coverage problem for Tom Adams which concededly caused Lau "several days" work. On the other hand, the respondent asserts that he told his staff he would take their vote together with the other information and data to the board. He said he provided the board with all cost information, coverage data and the results of the staff vote. He testified that he made no recommendation. In fact, board member Sharon Schrage testified Lau may have said you should probably stay with Blue Cross.

Contractual Issues: The facts and evidence here related involve a same or similar contractual problem but as to two different factual situations:

A. Studyhall Assignments: Stipulation exhibit "D" is illustrative of staff contracts issued in April 1977 in accordance with Chapter 279 of the Code for the 1977-1978 school year. Paragraph V of a two page attachment designated "contract addendums" reads in part:

"A normal teaching load is defined as six (6) academic classes or studyhalls in the eight period per day schedule."

An additional one page attachment implies staff extra duty assignments such as ticket seller and chaperon and designates the compensation. The complaining teachers take the position that the "normal teaching load" clause expresses an established contractual understanding and rule of construction within the district that each staff contract obligates the teacher to serve a maximum of six periods. Apart from the alleged preexisting practice of consistently assigning six periods, Nancy Kukral testified that after the superintendent disregarded the six period clause a teacher's committee held a conference with a committee of the board in late February 1978. Board members present were Sharon Schrage, Bill Husiman and Reed Weinburg. Mrs. Kukral said that she suggested that problems had developed with the language of the clause and that it should be amended to clearly support the six period maximum obligation. She asserts that the board members assured her committee that it was well understood that the contractual obligation was six out of eight periods and that the addendum provision did not need amendment. Kukral said she discussed this and other issues with the board members later in the spring but they were not so certain about the issue then, saying circumstances change. By this time, there was substantial dissension regarding contracts and assignments and multiple resignations were in process.

Sharon Schrage, the only board member testifying in this proceeding, stated that she recalled the Kukral committee meeting; that she remembers they discussed parts of the contract; but that they did not consider the "normal teaching load" provision. Schrage said that in her opinion many of the problems and this proceeding stem from ISEA agitation.

Stipulation exhibit "E" reflects staff classroom and studyhall assignments for the fall term fo 1977-1978. Several of the teachers, including Kukral and Metz, were assigned 6.5 periods which they contend violates the teaching agreement. Mr. Lau testified that he construed the "normal teaching workload" provision to mean that the minimum workload was six periods; that the absence of a school principal produced a less than normal work situation; and that it was necessary to make the additional assignments noted on exhibit "E". The respondent also noted the board was aware of the assignments and made no objections. The teachers involved were not compensated by reasons of the assignments, though the superintendent concedes he was provided fringe benefits by the board for performing an extra school function caused by a less than normal situation.

B. Extra Duty: At least as early as the spring of 1977, some staff apprehension involving the subject of extra curricular duties was discussed with board members. At its March 28, 1977, meeting the board decided that henceforth extra duties would be specified in the prime (academic) contract and "that no changes will be made for extra duties unless agreed to by the teacher." (Respondent's exhibit "2" - see also complainant's exhibit "W"). As the record is silent, seemingly the single contract practice was without incident during the 1977-1978 contract period. On March 13, 1978, the respondent provided the board with proposed staff assignments to be reflected in each teaching agreement covering the 1978-1979 term. This proposal, stipulation exhibit "F," assigns extra duties to specified instructors. To illustrate, most of the secondary staff drew "coach" and individually such jobs as drama (Metz), sponsor and J.H. basketball (Shook) were involved. Relying on the March 28, 1977, board action some teachers complain that since their 1977-1978 agreement did not include a proposed extra duty the superintendent's efforts violated important contractual rights protected by law. Some of the complaining parties state that adding an extra duty was a prime factor for resignation.

Mr. Lau noted in the informal response that during the early months of his tenure the area of extra curricular activities presented a problem, in some cases a program was denied students because he couldn't assign a teacher to the activity. As an example, he noted Drama and Mrs. Metz. He testified that for the 1978-1979 term he decided to handle all extra duty assignments as an incident of new contract proceedings. As to the uniform secondary assignments of "coach" he asserted he wanted available sufficient numbers to meet the need and as to other assignments he said he told the teachers he would try to make requested adjustments where possible. The respondent said he was excluded from the March 28th board meeting but that he does not understand their extra duty-contract decision to affect his authority in assigning duties in the spring as part of a new contract year. Nancy Kukral, who participated in the committee discussions about these contract matters, said it is her construction that the board action means that new extra duties may not be added to subsequent contract extensions without consent. Board member Sharon Schrage questions this construction and believes the extra duty rule is limited to the current contract year in issue.

Larry Stewart: Prior to the incident provoking this issue, Stewart had taught at Plainfield for thirteen years primarily handling science courses such as Biology and Physiology. Department of Public Instruction certification record 79980, of which we take official notice, reflects that Stewart holds teacher's certificate 79980 with endorsement to serve at the secondary level (7-12). These credentials contain specific approvals to teach General Science, Biology and Physiology though approval to handle Chemistry is lacking. State approval for chemistry is indicated upon proof of twenty-four semester hours in the board area of science, twelve of which are chemistry (stipulation exhibit "N"). The parties have stipulated that Stewart's academic background, on paper, satisfies this eligibility requirement.

By memorandum of November 14, 1977, Lau informed Stewart of the need for a 1978-1979 chemistry instructor and requested a review of his graduate transcript (stipulation exhibit "H"). A further communique of December 16, 1977 (exhibit "I"), signifies the opinion that Stewart is eligible for state approval in chemistry and "you are assigned to teach chemistry." In a responding memorandum to Lau (Exhibit "J" - probably dated late December 1977), the teacher notes that he is not in fact certified (approved) for the course; that when he applied for his teacher's certificate he did not feel he was competent to handle chemistry and asked the department not to grant approval; and that he still feels he is not qualified to teach chemistry. He also noted a recent letter to him wherein the Teacher Education and Certification Director advised him that a new approval could not be added to his credentials without his actions and consent. (Complainant's exhibits "AA" and "Z.") Stipulation exhibit "M," executed by the respondent on March 10, 1978, is a notice to terminate Stewart for the following reasons:

"1. Reasons of economy occasioned by your lack of [approval] to teach. . . chemistry. . . thereby necessitating the employment of another teacher.

"2. Reasons of economy occasioned by the elimination of the physiology course. . ."

Stewart resigned a short time later, alleging he decided not to resist Lau's action in order to prevent further harrassment of his students and himself. Subsequently, physiology was restored sometime in late March or in April of 1978. The record contains no testimony or other evidence by the respondent aimed at refuting Stewart's assertion that he did not feel qualified or competent in fact to handle chemistry, notwithstanding paper eligibility. Stewart alleges that Lau's termination efforts are a pretext and a sham, chemistry being used as a coverup of the real motive - i.e., an alleged intent and design to discharge and be rid of Larry Stewart because of his resistance to the superintendent's efforts to modify grading practices and academic standards and because of other dissident acts such as supporting principal Cook. This contention is to be examined in light of the following facts and evidence:

Upon learning in the fall of 1976 of a significantly high rate of district failures, the respondent undertook a study of the issue, requested principal Cook to assist him, and held a series of staff and individual meetings to explore the problems. Larry Stewart, due to a high incidence of failures, received specific attention during the early stages of grading and standards inquiry. In late fall a position paper was issued by Lau (Exhibit "G") noting, inter alia, that the failure rate was too high; that a critical evaluation of the involved students to isolate the causes of failure should be made; that a student who is trying should not ordinarily receive an F grade; and that the current high standards be retained as to the majority, with a relaxing modification thereof indicated for the academically inferior student in hopes of possible achievement rather than failure. Some staff members, including Stewart, offered resistance to these efforts, advancing the position, in the words of Lau, that he was making an attempt to undermine the school system and to destroy the fine reputation enjoyed by Plainfield for many years. At the same time the respondent formed the opinion that principal Cook, who had a close relationship with dissident staff members, was not supporting him on the grading and standards issue. Partly for this and other reasons, he began action in the spring of 1977 to terminate Cook, during the course of which Stewart and other teachers supported the principal. Mr. Stewart has asserted in these proceedings that he was called to a personal conference wherein the superintendent wanted to know why Stewart was supporting Cook and also wanted an account of what he could say in favor of the principal. Stewart claims that Lau was very angry with him because of efforts for Cook and that it is his belief that this is a prime element and a partial cause of the subsequent action to terminate.

As a result of staff resistance in the grading area and following Cook's termination, Lau said it was next to impossible to communicate with some of the involved staff and while not naming individuals Stewart is indicated. Thus, asserts the respondent, he began to use office memorandum, a number of which the record shows were directed to Stewart. A consideration of brief portions of the written interactions in late 1977 and early 1978 reflect on the nature of the relationship between teacher and superintendent:

December 16, 1977: ". . . your area of instruction is causing concerns not only . . . by parents but by students and your board of education. This concern has been evident since I have been here and I think I am right in saying it was evident before I arrived. (Exhibit "I" - the memo noted Stewart's current failure rate and directed him to provide numerous materials relating to biology and how it was being taught.)

Very early January 1978: "Since I felt the curriculum committee you mentioned - [Lau had criticized Stewart for not serving] - was not a curriculum committee at all but a committee to look into lowering graduation requirements, I chose not to be involved. As for my opinion, which you asked for, I have always felt graduating from high school represented achievement, rather than lack of achievement."

January 16, 1978: "I was rather surprised at your response to a second biology course. Were you attempting to play games by indicating a lack of knowledge in biology. . .

x x x

"You indicated that through your conversation with former administrators you were able to conclude that our problem is a result of a difference in student attitude.

"d) By putting your faith in former administrators, you are, in essence, saying you haven't and will not work with the present administration in an attempt to work this [failures] out. . .

x x x

[After accusing Stewart of supplying a student teacher with a copy of our hearing officers decision favorable to principal Cook, Lau concludes] Mr. Stewart the important question regarding our failure problem in biology and science is: What responsibility do you, as a teacher, have in this problem. . ."

January 23, 1978: "I would be very willing to study any proposals you would like to make from your recent experiences in the field of biological sciences.

x x x

"If you are questioning my varcity as to having examined the reading level of our present textbook, I suppose that is your privilege. . .

x x x

"Your assumption is incorrect. My responsibilities to you are many, which apparently include responding to written memos. . .

x x x

"Mr. Lau if your real problem with our present biology course is the grading scale . . . which at present is board policy, I would use . . . a grading scale you might favor. Please respond in writing indicating the percentage scale you would use. . ."

Stewart testified that a few weeks later and shortly after his arrival, principal Dripp began to visit his classes daily, sometimes coming two or three times a day. The teacher said he could not discover why Dripps did this and he observed no evaluation type note taking. The respondent denies any knowledge of such visits. There are a couple of other alleged episodes between Stewart and Lau, one involving work on negotiations during school hours and a second involving sick leave which did not occur until after the March 10, 1978, notice to terminate.

Mr. Lau testified that he did not tell Stewart that if he would not take chemistry he would be terminated. He did advise the commission's legal advisor during the initial inquiry that in 1977 and 1978 he had considered action to terminate the instructor for just cause but was uncertain if he had the reasons. When the chemistry thing arose he sought legal counsel from the school boards association and was advised that termination could be sought by reasons of chemistry. In conceding that Stewart was a very real thorn personally and to the district and that he presented a substantial problem of which the system should be freed, the respondent testified that he assigned the teacher chemistry in good faith with the idea he wanted him to teach.

Motion to Dismiss - Evidence

At the conclusion of complainant's evidence, the respondent moved to dismiss the proceeding. The request is comparable to a motion for a directed verdict, alleging, for the most part, insufficient evidence to support each and every charge at issue. Ruling on the motion was deferred to completion of the case.

As to issues one (student teacher) and five (Larry Stewart), the motion is overruled for reasons noted below. As to the remaining three issues, the motion is sustained for the reasons presently outlined. Since our decisions are a matter of public record and as we have a broad professional obligation to the entire teaching profession, it should be understood that the dismissal of issues 2, 3 and 4 rest solely on the stated reason. Such action is not to be construed as approving, condoning, or disapproving any alleged acts or practices involved in these issues.

I

Issue 2: Student Publication

As to an alleged censorship of student material, ideas or expressions the question of section 272A.6 involvement and an issue as to unprofessional conduct becomes relevant only upon showing an educator willingly, knowingly and intentionally caused the suppression. Censorship to be unprofessional within the meaning of our rules must result from an act or practice wherein the actor intended to cause suppression or deletions. In this case, the evidence shows a definite causation between Lau's action and the subsequent deletions - but for his actions and concerns the deletions would not have occurred. A majority of the commission, however, found the evidence insufficient to show that Lau

either intended or directed the deletions in issue. Accordingly, that issue is dismissed. A minority opinion considering, inter alia, this issue is attached to this decision.²

II

Issue 3: Bankers Life

An unanimous commission found insufficient evidence to support section 272A.6 involvement or a commission rules violation by reasons of the superintendent's actions regarding the group insurance changeover. Accordingly, the issue is dismissed.

III

Issue 4: Contractual Issues

A majority of the commission found insufficient evidence to support the allegation that the 1977-1978 contracts imposed a maximum workload limitation of six academic classes or studyhalls. In this regard, the prime contention that the additional studyhall assignments violated the contracts and thus our rules on contractual obligations is in error. To assure a clear understanding, please note that this ruling is predicated on an interpretation of the addendum clause which was found ambiguous and on the fact of insufficient evidence to show a prior understanding and construction by the parties consistent with the complainant's theory. Accordingly, the maximum workload contract contention is dismissed. A minority opinion, a portion of which considers this issue, is attached.

²Though it is unnecessary to reach the merits of the censorship issue, from a due process notice standpoint our original assumption of jurisdiction is, in part, predicated on the following criteria (Iowa Adm. Code, Professional Teaching, 640, Vol. 2):

"The educator. . .works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. . . (Rule 3.3(1))

"Shall not without just cause restrain the student from independent action in his [or her] pursuit of learning, and shall not without just cause deny the student access to varying points of view. (Rule 3.3(1)a.)

"Shall not deliberately suppress or distort subject matter. . . (Rule 3.3(1)b.)

"Shall make reasonable efforts to protect the student from conditions harmful to learning. (Rule 3.3(1)(c))

"Shall encourage others to respect, examine, and express differing opinions and ideas. (Rule 4.12(1))

"Encourage expressions of ideas, opinions and feelings. (Rule 4.7(1) c.)"

The teachers also complain that the 1978-1979 extra duty assignments were unprofessional in that they violated contractual rights acquired on March 28, 1977, through board action:

"[A]cademic contracts will include extra curricular duties and. . . that no changes will be made for extra duties unless agreed to by the teacher."

A majority of the commission found it unnecessary to attempt an authoritative legal construction of the board's language. A not unreasonable interpretation holds that extra duty assignments are fixed upon execution of the contract during the contract year in issue. According to his testimony, this was Lau's interpretation which is not substantially refuted in the record. Since in matters of difficult contract construction we will not find one unprofessional for acting upon a not unreasonable interpretation, the issue is dismissed.³

Findings of Fact

1. The commission finds that during February 1978 the respondent permitted and allowed student Virginia Haa, a noncertificated person, to teach without supervision in the Plainfield schools for at least six days, at which time he knew Haa lacked certification.

2. A majority of the commission further finds that the evidence, permissible evidential inferences and other circumstances of record, including creditability, supports Larry Stewart's allegation that the assignment of Chemistry and Physiology as grounds for termination was not in good faith, the actual motivation arising out of a troubled and sometimes petulant relationship between Lau and Stewart. Assuming arguendo that the termination efforts were motivated in good faith by reasons of Chemistry, we also find that the procedure and substance utilized by the respondent in efforts to terminate a concededly not incompetent thirteen year district teacher raises serious questions of professional fairness and commission rule involvement. (Commissioner's Dale Hackett, Don Parkin and Richard Paulsen dissent as to these findings and commission action thereon).

Discussion and Conclusions

I Student Teacher

As all concede, the practice of teaching in the public schools of Iowa is statutorily limited to those persons holding teacher's certificates issued by the Department of Public Instruction. See e.g., 1977 Code of

³The attached minority opinion argues additionally that the respondent was unprofessional in the manner, the way and to whom the extra duty assignments were made. As for example, forcing duties or assignments upon one allegedly unqualified or assigning vigorous physical responsibilities to an old person. Though the record contains some evidence touching on these matters, the issue was not clearly presented or argued for our appropriated disposition. See however a compleable issue discussed as to Larry Stewart, division II below.

Iowa, Sections 260.6 and 294.1; Clay vs Ind. Sch. District, 187 Iowa 189 (1919) Stone vs Berlin, 88 Iowa 206 (1983); 1940 O.A.G. 379. Furthermore, upon placing a professional in a specified area it is incumbent on the agents of the district to ascertain not only certification but also the appropriate endorsement and subject matter approvals. See Section 294.1, 1977 Code; Rule 3.4(6) and (7), Public Instruction, (670) Iowa Adm. Code. As an exception to these statutory and rules proscription, teacher preparation trainees may intern in the classroom but only under the actual supervision of one certified, endorsed and approved for the area. The supervision is classroom supervision and the requirement is obviously not satisfied by noting that there is a professional approved in the area of internship somewhere in the building who is potentially "available." In this case and notwithstanding the "lack of knowledge" argument in his brief, the respondent permitted student Haa to teach unsupervised for approximately six days and he knew of the certification law, knew she was not in compliance and also knew of the lack of supervision.

At the inception of its Section 272A.6 mandate to promulgate criteria of professional practices, the commission expressed concern with violations of school law:

"A violation of any of the school laws of Iowa constitutes a violation of the criteria of the . . . Commission." (Rule 3.1(1)a, Iowa Adm. Code, Professional Teaching, 640, Vol. 2, hereinafter rules cited are from this source).

In an analogous context we also established, as a professional employment proposition, that an educator "shall not delegate assigned tasks to unqualified personnel." Rule 3.3(4)f. Other relevant statutes and rules have some bearing but are at the most cumulative.

The violation of school laws, which we hve found, is a violation per se of the mentioned rules. Moreover, a violation of commission rules has been held to be unprofessional in cases where the underlying act or practice was knowingly and intentionally committed, not legally excused, and even where harm did not result to the students or district. See e.g. Lewis Central Comm. Schools vs Payne, Case No. 77-16 (Jan. 77).

Accordingly, a unanimous commission holds that it is not professionally permissible under our rules to knowingly permit, allow or use a noncertified person to teach. In this regard, such actions by the respondent violated our professional criteria. We have noted the situation existing at the time Haa taught and the apparent lack of any student damage or harm. Such mitigating factors have been considered in the decision below.

II

Larry Stewart

A.

The majority holds that the efforts culminating in the March 10, 1978, statutory notice were not motivated by a bona fide concern as to chemistry but arose out of a tumultuous and bitter relationship covering at least sixteen months, during which the recalcitrant teacher refused to comply with major policy decisions, especially those on grading and standards. Stated differently, chemistry and staff reduction (physiology) provided the

paper predicate for retaliation, the aim of which was expulsion. Since the evidence supporting this conclusion is detailed above, the point is illustrated by reference to only a few facts and evidential inferences.

During the initial inquiry (Rule 2.5(1)), the respondent made an admission that prior to March 10, 1978, he considered action under Chapter 279 of the Code to terminate Stewart for cause but concluded he probably lacked grounds. Subsequently, the chemistry ground presented itself and he consulted the Iowa Association of School Boards to ascertain their view as to whether the teacher could be expelled for this reason. At this time Physiology was not even in issue - it was added seemingly at the end when the legal notice was being planned in consultation with counsel and, in our view, to prop up chemistry. Physiology was restored by Lau as an available elective within days after the Chapter 279 proceeding became moot. Given the evidence of the long tumultuous relationship and the respondent's unequivocal testimony that Stewart was a major problem to him and the district (a problem he wanted to be rid of), it is incredulous to believe or infer that the superintendent actually wanted this teacher to assume yet another difficult science course at Plainfield. It should also be noted that our findings and views respecting this portion of the Stewart issue are based not only on all the testimony and evidence of record but also on considerations of creditability.

In view of the Iowa Professional Teaching Practices Act and our criteria promulgated thereunder, we think it is professionally impermissible for an educator to use the termination process out of a motive of retaliation for past actions, seemingly not viewed as independent legal grounds. Moreover, such a practice is not saved by seizing upon a subsequently acquired pretext in furtherance of that motive. Especially is this so (as we note in the second portion of this discussion), in the context of an administrator forcing an unwilling thirteen year district veteran to handle a new subject for which there is questionable qualification in fact with the alternative being termination.

In the recent Zoll⁴ case the cause of action for reinstatement, back pay and money damages against an Iowa superintendent and principal, arose out of an allegedly wrongful termination of Zoll wherein an alleged motive of retaliation by the school administrators was at issue. In affirming reinstatement and ordering an increase in the amount of the money judgement, the Court of Appeals noted that district and individual liability arose out of evidence "of an illicit motive" - i.e., retaliation by the administrators and district as the result of Zoll's critical but constitutionally permissible letters to the Allamakee Journal. Zoll deals with facts before the effective date of the new teacher termination requirements of Chapter 279 of the 1977 Code, and, unlike Zoll which is only collaterally involved, the Iowa law is directly in point. Chapter 279 permits termination only with cause and requires a specific enumeration of

⁴Affirming McManus, J., U.S.D.C., Northern District, Iowa - 8th Circuit Court of Appeals, U.S., decided December 1978, slip op.

the grounds to show cause. The law requires that the grounds asserted be the actual and good faith reasons and not an intended pretext for other and perhaps non-meritorious reasons or in retaliation. The following commission criteria are also directly in point or of some relevance to our holding that Lau's actions regarding the termination effort was professionally impermissible at least under Chapter 272A and our rules. (Rules 3.3(1)a; 3.3(2)b; 3.3(3)c; 4.5(3)b; 4.9(1); and 4.12(8)).

In conclusion, the majority and the dissenters are in agreement that as to the underlying problem Larry Stewart is not wholly without soiled hands. His actions, especially in the area of grading, were sometimes provocative and seemingly insubordinate. It is at least arguable that grounds existed for termination with cause under the statute. At any rate, such provocation is considered in mitigation and is reflected in the ultimate disposition of the case.

B.

Assuming arguendo that chemistry provided a bona fide termination motive, on the facts of this record serious questions remain touching on professional fairness and administrative propriety as to both the procedure and the substance involved in the chemistry termination issue. Stated differently, the question concerns the applicability of Chapter 272A to a situation wherein an administrator forces a new assignment (chemistry) on a veteran teacher who is unwilling for reasons of alleged teaching incompetency, whereupon an expression by the teacher of unwillingness automatically and without notice results in termination proceedings. As a principle of professional fairness and procedure, a high degree of care must be exercised in efforts to discharge a concededly competent veteran teacher for unwillingness to assume a new assignment, especially if there is a question of competence or qualification to, in fact, handle the course. It is axiomatic that an educator suffering in fact from subject matter incompetency or disqualification is not to be assigned in order to prevent harm to the students in that area. Moreover, it follows that an administrator has the duty to assure that subject matter is assigned only to those in fact competent and qualified, notwithstanding paper eligibility for legal state approval. (See e.g., Rules 3.3(1)c, "protect the student from conditions harmful to learning"; 3.3(4)f, "shall not delegate assigned tasks to unqualified personnel"; 4.5(1), "competent educators must possess the abilities and skills necessary to the designated task"; and 4.12(7), "shall not assign unreasonable tasks" and (8) ". . . exercise . . . reasonable judgement in the use of authority"). Furthermore, where a proposed assignment provokes a question as to the teacher's actual qualifications that question must be resolved to protect the students and it is unprofessional to force the assignment on an allegedly unqualified instructor by reasons of job security. The compelling necessity for this last rule is to protect against incompetent or unqualified instruction caused by a real fear of termination. (See Rules 3.3(1)c; 3.3(3)c, "shall not use coercive means . . . in order to influence professional decisions of colleagues"; 3.3(4)f; and 4.12(7) and 8(8)).

From the standpoint of professional procedure and fairness as to the chemistry - termination issue, these principles are relevant to a science instructor with lengthy service in the district, one by the way who is concededly not incompetent. During his thirteen year tenure he never taught chemistry and at the time of his Plainfield appointment the district knew they were acquiring a science teacher lacking legal authority in chemistry. Furthermore, the teacher's claim that he is in fact unqualified is not spurious and raised for the first time to defeat the assignment. As early as 1962 and as a result of this apprehension, the Department of Public Instruction did not attach chemistry approval to Stewart's certificate, notwithstanding paper eligibility (certification record 79980; compare exhibit "J", paragraph 2). It is not clear from the record if Lau knew of the 1962 assertion at the time of the assignment on December 16, 1977, but he had consulted on the official certification credentials, knew Stewart had paper eligibility and also knew the 1962 certificate was not approved for chemistry (Exhibit "I", paragraph 1). At any rate, the prior disqualification claim was pressed upon Lau shortly after the chemistry assignment (Exhibit "J", paragraph 1):

"[Following reference to the 1962 transaction] During my [college] studies I may have accumulated enough hours in chemistry to meet the minimal certification requirements, however I still do not feel I am qualified to teach chemistry. [Follows a statement that he advised DPI that he does not want approval added]"

It is significant that Stewart never articulated an absolute refusal to handle the course, his protestations framed as unwillingness and disqualification. He asserts that after the above quoted position (late Dec., 1977 or early Jan.) the only other related incident was the March 10, 1978, termination notice. This is in accord with Lau's evidence wherein he testified that he had no further contact on the issue nor did he make any efforts to advise the teacher that if he didn't handle the course he would be fired.

This commission because of its organization and statutory function, has a relevant connection to state certification procedure and substance. All commission members have extensive professional backgrounds in broad areas of education. Too often there is a tendency in assigning an educational task to ascertain paper eligibility only and to ignore the qualified in fact professional and legal proscriptions cited above. That is precisely what happened in this case. The record shows a not insubstantial nor frivolous claim of disqualification, outstanding for some 17 years. The record reveals no efforts to investigate and ascertain its validity, the only effort being action to fire the teacher as the result of unwillingness. On the facts of this record, it is professionally unfair to summarily proceed to termination of a long time district veteran who has never taught an assigned course and is unwilling to do so on a claim of disqualification. As a matter of professional employment practices, it is unfair to the teacher involved, but, more importantly, it is professionally impermissible under relevant statutes requiring competent education and under our comprehensible rules for the reason that the "teach or be fired" practice bears a substantial likelihood of educable harm to students as

the result of unqualified teachers perfering their jobs to summary termination. Prior to termination action, Stewart's actual competence should have been explored on the merits. If, in good faith, he was found qualified but still unwillingly, his long tenure dictated that reasonable ways of filling the position be exhausted before the drastic action of discharge for reasons of economy be employed to expel an otherwise concededly competent teacher with thirteen years of service to the district (Rules 3.3(3); 3.3(3)b and c; 3.3(4); and 3.3(4)f - see generally chapter four, competent performance). Finally, as we have noted the teacher expressed strong unwillingness but did not say he refused. The next event was receipt of the Chapter 279 notice. Given the facts here, reasonable fairness (if not due process itself) requires at least that the superintendent place aside the icy memorandums and adequately notify the teacher in a personal conference that qualification will be evaluated and, if present, the teacher must teach or face job loss (Rules 3.3(3); 3.3(3)b and c; and generally Rule 3.3(4), professional employment practices. It is not fair play to force a novel assignment upon a longtime educator and upon a written assertion of recalcitrance to proceed summarily to termination.

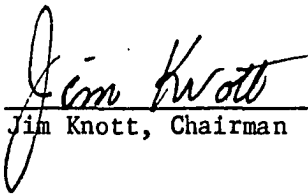
Decision

For all of the above reasons, it is the commission's decision that David Lau be reprimanded in accordance with Section 272A.6 of the Code. Commissioner's Don Parkin and Dale Hackett while voting for a violation as to issue 1, student teacher, dissent as to the findings on the Stewart issue and, for that reason, disagree with the reprimand insofar as it applies to the Stewart issue. The Commission's reprimand follows:

Reprimand

To David Lau, Superintendent Plainfield Schools: The entire commission present found that you permitted a noncertified person to teach in your schools without supervision and in violation of state statutes and rules of this commission. A commission majority further found that practices, processes and methods use by you which culminated in the March 10, 1978, termination proceeding to discharge Larry Stewart, were in conflict with relevant state statutes, judicial pronouncements and in violation of several of our professional practices criteria. All such violations constituted the commission of unprofessional acts and practices for which you are hereby reprimanded in accordance with Section 272A.6 of the Iowa Code.

Dated Jan. **5**, 1979



 Jim Knott, Chairman

Iowa Professional Teaching
Practices Commission

Plainfield Education Association By Kay Shook, Complainant)	
	)	Case No. 78-8
)	
vs.	)	Minority
)	
David Lau, Superintendent Plainfield Community Schools, Respondent	)	Hearing Decision
)	
)	

The following minority decision is issued by commissioner Jo Ann Burgess in dissent as to the majority action dismissing issue number two (alleged censorship) and issue number four (alleged contractual violations concerning studyhall and extra duty assignments). Chairman James Knott and commissioner Marilyn Williams join in and concur with the minority decision, except for its discussion of the censorship issue.

I
Censorship

The evidence clearly shows that Superintendent Lau knowingly caused a story written for the school paper to be changed and that he did, by weight of his authority, exert censorship over the students' writing. This action is a violation of commission rules 3.3(1)(a), 3.3(1)(b), 3.3(2)(b), and 3.3(2)(c), and the First Amendment, United States Constitution, which guarantees freedom of speech and press. See also majority opinion, censorship, footnote 3, quoting these and other applicable rules.

Neither party deny that the original story (exhibit "v") carried a headline reading, "A Great Loss for PHS," nor do they deny that the story contained an itemization of the number of years of experience of each resigning teacher (exhibit "v").

Superintendent Lau acknowledges that the story came to his attention prior to publication; that he was upset with the headline and the story; and that he did direct his principal, Mr. Drips, "to handle it."

During Mr. Drips testimony he answered a question which asked if he felt the superintendent wanted the story changed. Mr. Drips indicated that although the superintendent did not expressly say the story should be changed, Mr. Drips did leave the conference knowing the superintendent was displeased. Drips also testified he caused the changes partially because of Lau's actions.

Since the story was on a dummy copy ready for printing, and since the story had been taken to the office for printing, the superintendent's expressed agitation and direction to Mr. Drips, "to handle it," carried the tacit order to change the story.

The majority of the commission ruled to dismiss this issue for lack of evidence. In actuality the commission had proceeded to the final step in the hearing proceedings and determined that the specific act, i.e., suppression of students ideas, did not necessitate a sanction. The majority of the commission failed to deal with the question before them, which was, is there evidence showing proscribed suppression by Mr. Lau and thus a violation of commission rules.

Had the commission recognized the compelling evidence of respondent's censorship this issue would have been placed with the other issues which the commission had determined showed violation of rules. The severity of the sanction would then have been determined, based on the specifics of the case. Because the commission failed to acknowledge the evidence they did not speak to the issue of censorship of student writings.

The hearing procedure, properly followed, would have allowed the commission to provide direction for the teaching profession on the importance of individual rights and the responsibility of the profession to encourage students to exercise these rights. See Section 272A.2 and .6. For no matter how significant the specific action was within this case, the principle involved is of great importance. To deny that principle is to deny the rights of freedom of speech and press, and the right to an adequate and effective educational process encouraging the free expression of attitudes, ideas and opinions as required by our criteria (Rule 3.3(1)a and 4.12).

Our rules clearly acknowledge the rights of students to express themselves without fear of censorship or retribution (e.g., Rule 3.3(1); 4.7(1); 4.12). These are basic rights of our society. Students should not only be granted these rights but should be encouraged to express their beliefs and attitudes; they should be encouraged to question; and they should be encouraged to challenge. These are the rights of a free people.

When we as educators, force our views upon students or cause suppression of the students' views we are guilty of great hypocrisy, particularly, where, as here, the suppression is motivated by personal involvement with the ideas. We extol the virtues of our rights while we practice the suppression of those rights. In essence we are saying, as individuals you may, someday, challenge authority; but not now, not mine. But, here, of course the students were challenging nothing and only expressing their belief that Plainfield was suffering a loss. The ideas and expressions were so innocuous that one wonders what the respondent would do if faced with the slightest conversial ideas or opinions.

Where and when will the individual learn to exercise those rights and subsequently learn to assume the responsibilities arising as a result of their action if not through education. That is a basic duty of education, to teach students to function within their society as responsible citizens. Education, in our society, should not practice nor condone the suppression of any individual's freedom. Indeed, as ancient authority decreed for all ages, the very essence of an excellent education and society is the free expression of ideas and opinions as part of the learning process. The extreme alternative produces ignorance, tyranny and subjection to the ideas and concerns of a few. My personal lengthy experience in the teaching profession and my involvement in library science, especially with the issue of "suitability" of written ideas for students, has permitted me to observe a very casual and dangerous attitude about the permissibility of subjecting students to various kinds of censorship and mind control. It is an attitude of "never mind" or "don't bother me" I know what ideas and opinions are best for these children and they must be deprived of all others which I think are inappropriate or bad. In my opinion this commission should have spoke out on this difficult subject of constitutional and educational dimensions. In summary we should remember, as the Des Moines Independent School District learned in the famous High Court arm band case, that "students don't leave their constitutional rights under the first amendment at the school house door." I would decide this issue by holding that the respondent engaged in constitutionally and professionally proscribed censorship which was unprofessional and in violation of relevant criteria of both chapter three and four of commission rules.

II

Contractual Violations

A. Workload - Studyhall

The evidence clearly shows that Superintendent Lau did assign duties beyond those specified in the contract and failed to recognize a precedent established through past practice. This action is a violation of commission rules, 3.3(3)b, 3.3(3)c.

Neither party denied that the past practice of Plainfield was to assign no more than six academic classes and/or study hall periods to an individual teacher during an eight period day.

The Superintendent pleaded ambiguity of contract language and abnormal conditions within the district as justification for his action.

The contract supplement reads: "A normal teaching load is defined as six (6) academic classes or study halls in the eight period per day schedule." (exhibit "D"). The Superintendent contended that because the word maximum was not inserted prior to the word six in the contract language a fair interpretation was that assignments greater than six could be allowed. The teachers contended that past practice was such that precedent justified their interpretation of the contract which was that no more than six periods would be assigned per day.

There is validity in the argument that an abnormal situation existed within the district because of a vacancy for the position of H.S. principal. This situation may have created a need for an increase in the teacher workload.

The record shows that the respondent did receive extra fringe benefits for the additional work he was required to assume as a result of this vacancy. It is not shown by whose recommendation this action was initiated.

Lau testified he did not recommend that the teachers receive extra compensation for the additional workload they were required to assume.

Following the employment of a principal, which caused a return to normalcy, the Superintendent's extra workload was decreased. The record shows that the teachers' workload was not subsequently decreased in order to meet the terms of the contract or to correspond with past practice; nor did Lau make any such recommendation to the board in that regard.

The responsibility for recommending that the teachers receive additional compensation and the responsibility for recommending that the workload be returned to normal would have been that of the Superintendent.

The respondent was aware of the past practice of the district. He was aware of the contract provision and the relationship of that provision with the precedent of past practice. He did not attempt to rectify the deviation from the contract nor the deviation from the precedent of past practice by recommending compensation for overload or by recommending reduction in the workload following return to normalcy. He failed to make these recommendations even though he had received such reliefs due to the overload he had been forced to assume because of the abnormal condition within the district. I would decide this issue by holding his practices violated the commission's contractual obligations criteria and was unprofessional.

B. Extra-duty and New Academic Assignments

The evidence shows that Superintendent Lau did assign extra-duties and new academic assignments to individuals disregarding the terms of pre-existing contracts and disregarding the expressed wishes of the individuals. These actions are in violation of commission rules 3.3(3)c, 3.3(4)(a), 3.3(4)(c), 3.3(4)(e), 3.3(4)(f).

During the formulation of the 1977-78 contract the board entered a motion "that no changes will be made for extra duties unless agreed to by the teacher." (exhibit "2") The interpretation the administration gave to the motion was that the board was bound for only one school year not from year-to-year; whereas the teachers interpreted the language to mean the board was bound from school year to school year.

The interpretation of the motion remains an open issue. The intent which prompted the action of the board appears clear; that is, to reach a mutual agreement between the administration and the teachers on a yearly basis concerning the assignment of extra duties.

Beyond the issue of contract interpretation exists others which should have been of greater significance to the commission:

- 1.) Is it ethical to assign classes or duties to teachers who do not feel qualified to meet the responsibilities of that assignment; or who in fact are not qualified? (see the majority's pronouncement on this issue above regarding Larry Stewart's termination proceeding.)
- 2.) Is it ethical to assign extra duties to individuals who have indicated they do not wish the assignment before all attempts have been made to locate an individual either on existing staff or from newly employed staff who would be willing and who is qualified to assume the duty?
- 3.) Should accepting extra duty or new class assignments determine the availability of a position for individuals with satisfactory and lengthy experience within a district?

Superintendent Lau felt the answer to these questions was yes.

- 1.) Individuals who felt unqualified or who were unqualified for a position were assigned to such positions. (Mrs. Shook, Jr. High Boys Basketball; Mr. Stewart, H.S. Chemistry; Mrs. Metz, American Government, etc.)
- 2.) Assignments were made before full staff was employed. This action subsequently eliminated the effective and good faith advertising for those positions. Since Lau had arbitrarily filled all positions in order to insure that the activity would be available for the coming year he had eliminated any meaningful possibility of advertising for that position. The likelihood of finding needed combination of academic and extra-duty qualifications were subsequently greatly reduced.
- 3.) Teachers refusing extra-duty assignments or new class assignments retained only two options, resignation or continuation under the terms of the previous contract regardless of past evaluations as a classroom teacher or past assignments.

In several instances the teacher was forced to accept a contract which would place the teacher into a working condition abhorrent to them. In essence the teacher was forced to resign.

In reaching the decision to dismiss this issue the majority of the commission disregarded the primary question, Is there evidence showing rule violation and again proceeded, as in the issue of censorship, to the determination of the severity of the sanction. Because of this action by the majority they failed to deal with the issues cited above.

In failing to address this issue the majority failed to take a position to speak to the issues, except in a limited context on Stewart.

The practice in Plainfield of arbitrarily assigning duties and increasing workloads failed to recognize the rights of the teachers as provided under our rules, the Code of Iowa, and existing contract provisions supported by past practice precedents. The practice shows flagrant disregard for the working conditions of the employees and the morale of the staff. The practice eventually became so abhorrent to individuals they chose to resign rather than to work under conditions which failed to recognize them as professionals and which failed to allow them a voice in the process of making the decisions concerning their job assignments and working conditions. (See Rules. 3.3(4) - commitment to professional employment practice; 3.3(3); 4.12(7); and 4.7(3)(b)).

This unilateral, arbitrary and capricious use of administrative authority when done with cavalier disregard of the individual fails to recognize teachers as professional educators but rather implies they are subservient personnel to be manipulated at will with no regard to their rights.

When done with the intent to foist undesirable working conditions upon an individual in order to force resignation the practice becomes an issue of harrassment and manipulation of contract, both of which are unethical as well as illegal. (In this regard, see the entire majority discussion of the Stewart issue above.)

Regardless of which was the motivating force, cavalier disregard of the individual or manipulation of contract to affect resignation, the assigning of extra workload and the assigning of undesired extra duties and/or new class assignments violated the rules of the commission.

The contractual issues should have been placed with the issues the commission determined showed evidence of rule violation. The determination of the appropriate sanction could subsequently been made according to the specifics of the case. I would have ruled the contractual issue involved a violation of commission rules and was unprofessional.

Ms. Burgess
Signed and dated
Minority opinion
Dec. 26, 1978
D.R.B.

APPENDIX P. IPTPC HEARING RECORD 80-12

IOWA PROFESSIONAL TEACHING

PRACTICES COMMISSION

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Joyce Van Roekel, Parent, Complainant)	Case No. 80-12
)	
vs)	
)	
Delmar Cram, School Administrator)	Hearing Decision

Statement of Case

This case, alleging the unprofessional written publication of confidential and demeaning information about high school students, was filed on August 3, 1980. Subsequent to staff inquiry and recommendation, the matter was unanimously assigned for hearing by the commission. Hearing was held on October 31, 1980, with Carlos Orezza appearing for parent Van Roekel and Robert Fitzsimmons, Head, Secondary Principals Association, representing Mr. Cram. The complainant did not attend. Delmar Cram is a member of the teaching profession (see Section 272A.2, Iowa Code) and Van Roekel is a person with standing to complain under our rules (see 640-2-4, Iowa Administrative Code, Professional Teaching). The alleged subject, unprofessional comments about students, is covered by the Practices Act (Chapter 272A) and our Professional criteria (Chapters Three and Four, Administrative Code, supra). Accordingly, we have jurisdiction of the parties and subject matter.

Statement of Facts

Complainant's hearing exhibit No. "1", the content of which provoked this complaint, is an April 30, 1980, memorandum by Humboldt High School Principal, Delmar Cram to "All Faculty", the subject matter of which was "students with excessive absences." The document involves twenty-eight students and, according to Cram, was issued pursuant to guidelines established by "Attendance Policies" (respondent's exhibit "A"). That policy provides, inter alia, that missing twelve or more times is a probable basis for class drop and it directs staff to consider all absences in final student evaluation. At least from the four corners of the document, it shows no purpose of advising staff of the need to be aware of and possibly responding to designated medical, psychogenic, emotional or behavioral problems. After noting the absences of a particular student, in many cases Mr. Cram included an historical comment, the following of which are illustrative of those assigned the greater fault in this action:

1. "Barbara Johnson, 16 times Government...Married - 'upset stomach' (something she ate). Obviously she has problems which weren't school initiated - I don't think..." [Cram concedes he knew Johnson was pregnant when he drafted this comment.]

2. "David Naureth...15 times...Just isn't cut out for school I guess. Let the chips fall where they may, but lets keep him in school for whatever good it may do."
- 369.
3. "Kirk Parker...11...He's against the wall. No sympathy from me."
4. "SaBelle Smith...12 - maternity leave (not school initiated)."
5. "Rochelle Fishel...12...Stomach problems. Under doctors care and receiving professional counseling."
6. "Vicky Van Roekel...15 times...counselor appointment (out-of-town counselor...extenuating in that she needs this counseling..."

As intended, the memorandum was issued to the entire professional staff. The hearing evidence reflects some situations where a given teacher had no academic or other attendance involvement with a listed student. Math instructor Diane Nicol, for example, testified that she did not have classroom or other direct professional contact with several of the students and specifically named the Van Roekel and Johnson girls. While the evidence is ambiguous as to specifics, it is clear that one or more persons obtained a copy of this document (probably lifted without permission from staff belongings) and caused its wide publication to the student body and throughout the community. Hearing exhibits and collateral documents indicate that the incident sparked substantial public controversy in Humboldt. As the result, the record shows that the respondent, more than once, issued an apology dealing with some aspect or consequence of the April memorandum (see e.g., Respondent's exhibits "C" and "F"). While other evidence may be referred to below in "Discussion", these facts are sufficient to our disposition of the case.

Findings of Fact

1. The commission finds that the respondent authored the April 1980 memorandum with student comments, including those above quoted; that he published same to all faculty; and that said acts of drafting and publishing such memo with comments is a proximate cause of students and public acquiring knowledge of its content.
2. It is also found that respondent stipulates that a portion of such comments were improper (though it is for the commission to determine the legal or more properly the professional effect of such under Chapter 272A of the Code and our criteria).
3. It is additionally found that inasmuch as the sole purpose of the memo was to implement the district "attendance policy" (exhibit "A"), none of the comments, including those above cited, were relevant to such purpose.
4. It is finally found that for whatever relevance exists, the hearing produced only minor evidence that the comments made public caused a degree of emotional "injury" to one or more of the involved students and family, including the child of complainant.

Discussion

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I

General.

It ought to be obvious to all members of the teaching profession that in writing and in verbal communication about all aspects of a student's existence, there is a professional obligation not to demean, slander, be cute or flippant or to otherwise treat the child in some derogatory manner. Moreover, educators by virtue of their special trust are often obligated not only by the profession but by the law itself to safeguard confidential data legitimately in their possession. Thus, for example, certain medical information obtained by an educator to benefit the child is legally privileged and must not be released except as allowed by law. A contrary release violates our criteria. It is common knowledge with this commission that too often educators do not honor this essential teaching obligation. Frequently, the retreats of staff ring with the stupidity of Steve and the mental infirmities of Jane. Nor is such nonprofessional approach to students without traumatic results. This case in a minor way, is illustrative: Not only was half of Humboldt distracted to some extent, but time has been required of three governmental agencies, school board, State Citizen Aide and us. But a more tragic case was a young man who killed himself when coffee break chatter as to therapy for possible homosexuality filtered down to his peers. Such an incident in Iowa would carry with it not only extreme professional liability but the school district could also be subject to substantial money damages for the unprofessional and wrongful act.

The Professional Teaching Practices Act (Chapter 272A) and our criteria proscribe such written and verbal disregard of students. Iowa Administrative Code, Professional Teaching, 640, Chapters Three and Four provide in part that an educator:

1. "Shall...protect the student from conditions harmful to learning." Rule 3.3(1) C.
2. "Shall...not expose...to unnecessary embarrassment or disparagement." Rule 3.3(1) D.
3. "Shall not show disrespect for or lack of acceptances..." Rule 4.12(3).
4. "Shall keep in confidence information that has been obtained... unless disclosure serves professional purpose or is required by law." Rule 3.3(1) G.

II

Specific Comments

At the outset it should be noted that the respondent contends that he is not responsible for the fact that his document was ultimately published to students and the public. While it is true that this broader

knowledge probably caused the harm, if any, consequent on the memo, it is not necessary for our disposition to decide that issue beyond our comments in the margin¹. If any of the comments are improper, such were their nature with staff involvement. Broader public distribution could magnify the impropriety and cause or add to real injury, but not change wrong's nature.

Actually, we are concerned with two different kinds of comments each of which present a distinct problem. The first is easy. Those comments cited above such as "upset stomach", etc., clearly served no useful purpose; were intended as cute and are demeaning; and violate the cited criteria and are unprofessional. Comparable comments would not be professionally permissible directly to a student and such communication is equally improper with staff. It is never justified under any circumstances for educators at any level to cast their own and other students in a demeaning or derogatory framework. Such has the propensity to contaminate the educational purpose; to stigmatize the student in the eyes of other educators; and to mark the student for possible "different" treatment. One or perhaps two of the other comments in this category are borderline and won't be considered further.

The "in counseling" comments (Van Roekel and Fishel) must be viewed in light of legal and professional principles of privileged and confidential information. The medical privilege arises out of the physician--patient relationship and has the sanction of law. Unless waived by the patient, such information shall not be released by counselors, nurses and others in possession thereof. This privilege established by law is questionably applicable here. Moreover, if applicable then it's breach would violate our professional criteria (see e.g., Rule 3.3(1) G). The present record, however, is not sufficient to determine the existence of the privilege. In this regard, the complainant did not attend the hearing; nor did Fishel.

The evidence does reflect, however, that the Fishel Parent in advising as to counseling requested confidentiality. Such was the effect of respondent's own testimony. As to Van Roekel, Cram testified he did not recall that the counseling statement was provided in confidence. That issue is settled, however, by his August 11, 1980, letter to the Van Roekel's wherein he states (respondent's exhibit "f"):

"I was embarrassed, especially, by my comments relating to Vicky's absences because it was a betrayal of confidence placed in me..."

Despite the lack of proof as to medical privilege and without more, the breach of this confidence was professionally impermissible. The contention is pressed, however, that it was legitimate to apprise staff

¹The law in many cases holds that where one causes to be put in operation a thing potentially injurious, liability for a specific harm is not to be avoided because such harm was not intended. Certainly in an open classroom or like facility there is a foreseeable risk of that which happened here. In a legal sense, Cram's drafting of the memo and its issuance, however limited, was a proximate cause of students and community learning its content.

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of such counseling so they were better able to cope with the student's problems. Apart from the fact that the comments advised of nothing to so equip staff, we think the contention falls for a number of reasons:

1. The purpose of the memo was solely to implement the district's attendance policy (exhibit "A") and the counseling comments were gratuitous and of no relevance to such purpose.

2. Moreover, even assuming some validity to the contention the memo was indiscriminately issued to all staff despite their involvement or the lack thereof with Van Roekel and Fishel.

3. Finally, the ultimate consequence in issuing the Cram memo was to cause countless strangers to learn of the data received in confidence.²

The record relating to Fishel and Van Roekel clearly demonstrates professional criteria involvement including Rule 3.3(1) G, Surpa.

Decision

The commission does not feel that the matter standing alone warrants Code Section 272A.6 consideration of certificate involvement. We are also not unmindful that Cram's actions resulted in his censure from the office of the Citizen's Aide and portions of the Humboldt community. He has apologized and here conceded some of the comments were improper. Accordingly, we have agreed (Williams, Knolt and Burgess dissent and would impose other noncertificate sanction; Bob Glass absent) to issue only an official warning at this time.

Warning

TO: Delmar Cram

As noted in the above discussion, there are no circumstances when it is professionally permissible for an educator to deal with students in a demeaning, flippant, "cute", derogatory or other negative manner. Moreover, all educators are especially charged with a professional obligation to safeguard confidential student information. As the administrator in charge of the Humboldt High School, you not only must honor this obligation imposed by Section 272A.6 of the Code, but you should also seek such compliance therewith from the entire professional staff. From the record here and from your own concessions, your comments considered in this opinion were professionally impermissible and in violation of

²The reader should consider whether the incident may also have involved the Federal Student Records Legislation (20 U.S.C. 1232g) concerning family and student privacy matters.

the Professional Teaching Practices Act and our professional criteria, supra. You are officially warned under Section 272A.6 that in future student transactions you have a professional obligation to abide by the principles and spirit of this opinion and as nearly as possible to assure its compliance throughout the physical plant under your control.

Jo Ann Burgess
Jo Ann Burgess, Chairperson

Dated November 24, 1980

D.R.B.

km

APPENDIX Q. IPTPC HEARING RECORD 81-4

Iowa Professional Teaching Practices Commission

Mar-Mac Educational Association,	}	375
Complainant		
vs.		Case 81-4
Craig McIntosh, School Administrator,		Hearing Decision
Respondent	}	

Statement of Case

This Chapter 272A proceeding, alleging some six episodes of unprofessional practice, was filed on July 6, 1981. Respondent's informal position dated mid-August was furnished August 27, 1981. Subsequent to inquiry and written recommendation by agency counsel (9/11/81), the commission, by unanimous action on September 18, 1981, assigned Mar-Mac for contested case proceedings on October 30, 1981. Code Chapter 17A hearing notice, dated September 21, 1981, was served on all parties; respondent furnished formal answer; and the matter came on for hearing at 9:00 a.m. on the designated date, the record being closed at 7:00 p.m. Mr. McIntosh was represented by counsel, Donald Gloe and James Burns, Decorah, Iowa. James Sayre and Becky Knutson, Des Moines attorneys, represented Mar-Mac Association.

Issues Excluded or Dismissed

At hearing assignment, we excluded from consideration the allegations relating to educators Rotach and Haught. Though not proffered at the close of the evidence, a motion to dismiss the following issues was sustainable:

1. Goss vs. Lopez. Defense assertions to the contrary, some measure of the Goss mandate applies to school disciplinarians who actually observe alleged student wrongdoing (see p. 584, Goss vs. Lopez, 419 U. S. 565). This issue was, however, set for hearing on indications to agency counsel that the discipline was predicated, in part, on prior student transgressions. The only evidence was respondent's denial. The remaining facts do not raise a substantial issue of criteria violation (see division, "Jurisdiction") and the issue is dismissed.

2. Donna Geach Evaluation - Bad Faith Issue. This issue is more fully detailed at page 2, hearing notice, "Other Issues", numbered paragraph "1 b". While the record notes hostilities between the two, the issue is dismissed for want of substantial evidence to show malice or bad faith. Nothing done here affects the remaining Geach evaluation issues (see hearing notice, p. 2).

Jurisdiction - Nature of Proceedings

In a caustic show of displeasure at commission involvement with complaint issues, counsel admonished the agency as to a proper exercise of jurisdiction and scope of proceedings.¹ Accordingly, we extend the customary statement of jurisdiction.

In keeping with the Iowa Professional Teaching Practices Act (Ch. 272A--"Practices Act"--Iowa Code), the commission is invested with quasi-legislative (rulemaking--Sections 272A.5 and .6) and quasi-judicial (adjudication--Section 272A.6) authority. Such powers are exercised, for the most part, in accordance with the rulemaking and contested case hearing provisions of the Iowa Administrative Procedure Act (Chapter 17A, Iowa Code). Rules and criteria statutorily authorized (see Section 272A.6) and adopted pursuant to that Act have the force and effect of law.

The Practices Act gives the commission personal jurisdiction as to all members of "the teaching profession," i.e., all educators holding or required to hold state "teaching" certification (Section 272A.2). Contrary to counsel's anxiety of "making up rules," our subject matter jurisdiction is predicated solely on the existence of agency criteria (rules) of professional practice adopted under Section 272A.6 and in effect at the point of alleged violation: "a violation, as determined by the commission following hearing, of the [adopted] criteria shall be deemed to be unprofessional practice..." (emphasis ours--Section 272A.6).

The Practices Act generates a concept of professional culpability as contrasted with legal liability (cf. Boyden-Hull Schools vs. Baker, 81-5, November 1981--strict legal showing as to breach of teaching contract unnecessary to 272A liability). Noncompliance with the constitution, civil and criminal laws, controlling rules, and perhaps relevant common law principles may give rise to Chapter 272A consequences, provided such conduct violates an existing professional criteria. Conversely, not every noncompliance with a law is professionally culpable or actionable under the Act (cf. Area 1 vs. Lindahl, 77-19, January 1978--educator's conceded violation of Code Chapter 279 contract not in violation of agency criteria for reasons of public policy arising as result of spouse's mental health). Finally, professional fault can arise in the absence of legal obligation (e.g., requiring a measure of procedural due process in corporal punishment cases, though arguably the Supreme Court has not ruled such constitutionally mandated--cf. Ingraham vs. Wright, 430 U.S. 651 (1977)).

Commission jurisdiction is activated by complaint of one having standing (Rule 640-2.4, Iowa Administrative Code, Professional Teaching). In addition to the association, the teachers involved have standing and all have extensive interest regarding alleged unprofessional practice in their school community. Chapter 272A permits the complainant or them to raise issues of student

1. E.g., counsel cautioned against our forging rules "as you go"; questioned "standing" as to the student issue absent parental involvement; and found it improper for the agency to have included the Smalley-Marathon incident.

discipline without parental involvement. The Smalley issue is also properly before us. Though discretionarily the issue might have been excluded upon the theory of compromise, as to the agency we are committed to no doctrine whereby alleged unprofessional practice is or can be waived by the persons involved.

In summary, the school administrator is within our personal jurisdiction. The complaint and hearing evidence raises substantial issues of agency criteria involvement, with the result that subject matter jurisdiction also exists.

Statement of Facts

Craig McIntosh served Mar-Mac schools as secondary principal from 1978 through May of 1981. He is currently a school administrator at Garnavillo, Iowa. Testimony that his tenure at Mar-Mac was unremarkable until its closing months, is undisputed, save for professional encounters with Donna Geach, allegedly resulting from peer complaints of inequitable treatment. Otherwise, the record reveals no substantial McIntosh-Geach dispute until spring, 1981. As for the remaining adverse witness, respondent notes Smalley and he got on well until the April 1981 Boston Marathon incident. He asserts that the association's complaint arose from 1981 fiscal turmoil articulated as follows (response, p.1):

"In the last half of the 1980-81 school year, staff reduction had to be made to make Mar-Mac fiscally responsible. Salary negotiations have been sent to an arbitrator to decide in August of 1981. During this time period, the MMEA has been very vocal in its lack of support for school board decisions and the administration. They have demanded more voice in the operation of the school and have contested the reductions, the salary negotiations, teacher schedules, student schedules, and have stirred up a lot of controversy and negativism in the community through their efforts. These efforts have largely been the work of several militant staff members (Donna Geach, Don Smalley, Eric Garland) and I believe are the reasons the MMEA is attempting to discredit my reputation as an educational administrator."

As to three of the complaint problems, McIntosh rationalizes his action as appropriate to terminating verbal challenges of administrative authority (Geach, Smalley and student suspensions).

Donna Geach has served as vocal music instructor at Mar-Mac for fifteen years. She was, at all times material here, president of the local teachers association. She is a principal complaining witness. The record lacks any comprehensive professional profile of Geach for the Mar-Mac years; it reflects minor encounters with respondent, 1978-1980; and the problems at issue in 1981 are detailed presently. Don Smalley, high school math instructor, has been at Mar-Mac for eight years. Apart from his description as a "militant" agitator against board staff reduction policies, the relevant evidence relating to him covers the "marathon" incident below.

Pink Elephant:

In accordance with Code Chapter 279 and Mar-Mac's master agreement (Exhibit "A", p. 5), Donna Geach was formally evaluated once by respondent in the spring of 1981. Exhibits "3" and "4", dated May 13, 1981 and signed by both educators, record the principal's impressions as to the teacher's professional and contractual aptness. Conceding at the hearing that item 11 was erroneously assigned a "4" (lesson plan default--Exhibit "3") and in light of our dismissal of the bad faith evaluation issue, item 20 of both documents is the concern here. Item 20, Exhibit "3", recites: "Teacher stands behind professional decision." Though the record at best is ambiguous as to meaning, McIntosh found it applicable to verbal deviations from actions and decisions of the district and himself (Item 20 comments, Exhibit "4"): ²

"20. The instructor has to stop bad-mouthing school decisions while socializing at the Pink Elephant. She has chosen to question many school decisions while sitting at a bar stool at the Pink Elephant Supper Club. I am aware of this because four separate people, have come to me very upset and dismayed about the willingness of this instructor to back-stab, tear down and question decisions that are strictly administrative in nature and scope. It is one thing to question decisions at the proper time, but to do so after the decision is finalized leaves the appearance of lack of support, is very poor public relations and very unprofessional.

To correct this deficiency the instructor should state her opinion at the proper time and keep her opinions after the decision has been made, to herself." (Emphasis added):³

We officially notice that the Pink Elephant is a relatively comfortable establishment in close proximity to the highway 18 Mississippi bridge between the two towns. Exhibit "3" warns Geach to refrain from dissent of board and administrative actions or risk Chapter 279 termination.

The music teacher testified that she only learned of the item 20 allegations

2. It was suggested in the proceedings, that since the term "decision" is singular and one does not commonly refer to board action as "professional decision", what was intended was adherence to teacher's own prior commitments.

3. At another point, McIntosh reflected sufficient discomfort with mixed student-parental alcohol association that he assigned such as one factor in leaving Mar-Mac.

through being served with the document; that while the administrator conceded no personal knowledge, he denied her request to learn his source supporting the charge; and that respondent refused to supply her with details of the alleged hearsay beyond the assertion of Item 20. Geach does not deny that she may have made some comment(s) but, with one exception, she maintained at the time of report and during these proceedings that she does not recall what she might have said or to whom. At inquiry, however, she told agency counsel that she may have commented on the merit of district staff reduction activity. She noted her role as association president at the time and the fact that McIntosh was officially involved in staff reduction.

Initially resisting efforts to identify the four hearsay sources, after consultation with counsel and under protest respondent proffered this data as the support for evaluation comment 20:

1. Lee Hinkle, former teacher, in April/early May,⁴ approached respondent on unrelated mission and stated Geach told him McIntosh is a poor principal and a detriment to the district.

2. Doug Reynolds, current Mar-Mac board member (then, at least), related to a basketball activity (see fn. 4) asserted he overheard Donna criticizing district staff reduction activity at the supper club bar.

3. Pat Mullarkey, electrician, at Mullarkey's residence, and Larry Bromble, former board member, at school, both of whom related that while they had not personally heard such they had been told by third persons that the teacher was "critical of board decisions and myself" (Bromble) and "critical of me as principal and school board decisions as far as staff reduction" (Mullarkey). McIntosh advised the commission that as he accepted Mullarkey and Bromble's word he extended no effort to inform himself as to their hearsay sources. Apart from these references to supper club assertions, the hearing testimony also contains the remaining general statement that her staff reduction comment involved Superintendent Tuttle.

Record ambiguity prevents knowledge if sources relate separate Geach incidents or but one, i. e., Reynolds overhearing Hinkle's discourse subsequently being transmitted to Bromble and Mullarkey. Testifying earlier that rumors abounded during this period, McIntosh conceded he honored the word of each man; did not attempt to identify the reporters to his hearsay sources; and extended no efforts toward issues of creditability or accuracy. He stated that he acknowledged staff right of free speech in groups or to the media but said Geach had no right to criticise his actions as administrator. He contended that she should have come to him or perhaps the superintendent with her complaint.

The respondent supports his evaluation comments and Chapter 279 threat as proper on the rationale that public dissent and criticism undermines administrative creditability, with consequent detriment to the school community. The evidence does not reflect that the alleged criticism was projected to an audience greater than the person(s) spoken to, though at one point, it was

4. As to all sources, specific dates for an alleged Geach transaction and communications to the principal are not given. McIntosh approximates all activity during last half of April and early May.

overheard by another. Apart from its transmittal to the administrator, the hearing proof does not show significant, if any, dissemination of the alleged dissent; nor is there proof of school community detriment. The record also contains no evidence that Geach's performance or effectiveness (whatever it was) was compromised as the result of extra school dissent and criticism.

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Mar-Mac Superintendent, Tom Tuttle, testified that he has been a chief school officer in Iowa for several years; has acquired knowledge and experience relating to the staff evaluation process and its purpose; and while he supports the respondent on the Geach evaluation, he personally would not use item 20 (supper club incident) as an evaluation subject. Tuttle further asserted that some extra school practices, such as drinking evenings in Wisconsin, are beyond the proper subject of formal staff evaluation.

Association Meeting:

On May 29, 1981 a staff conference was held at 3:00 p.m., at the conclusion of which McIntosh acknowledged the closing of the 1980-1981 school year and dismissed faculty. Subsequently, members of MMEA gathered in Geach's room for an association meeting, into which prior to 4:00 entered their principal. Prior notice of the administration precluded MMEA gatherings at times officially designated a school day. The respondent remained mute as to his purpose, engaged in no interaction with members of a warning nature but rather seated himself and remained until he and Geach were alone. Having designated school closing within the hour, McIntosh reprimanded the music teacher for conducting association business during school hours; told her she was on his "hit list" (his term); and warned her that she would be "written up" for further infractions (cf. response, p.1). As with the evaluation warning of potential 279 action, the evidence reflects that the principal knew he was leaving Mar-Mac. McIntosh conceded to agency counsel and acknowledged such concession at hearing, that in view of the school closing action his reprimand was of questionable merit.

Donna asserts that at this confrontation the administrator was exercised and immediately before leaving remarked "you are on my shit list" and called her "Miss Piggy." Testifying as to shock and distress, she followed him into the hall and allegedly shouted, "What did you say--did you call me Miss Piggy?" Don Starkey, school janitor, by deposition, noted he was in the hall, passed McIntosh and exchanged greetings, at which time Geach appeared in the hall visibly agitated and in a loud voice exclaimed: " 'That's just fine, I'm going to let each board member know what you said,' something about calling her Miss Piggy." Starkey said the principal looked surprised, raised his arms and said, "Aw come on now." This testimony related to the closing day of school and commences with that point when respondent leaves Geach's room. The instructor proceeded to Superintendent Tuttle's office too upset for discussion and went elsewhere in the building finding Don Smalley and spouse. She alleges she told Smalley about the reprimand and "shit list--Miss Piggy" comments. Apparently related, McIntosh appears outside and asks Smalley "What's wrong with Donna;" the latter responding, "You know what's wrong." McIntosh denies "shit list--Miss Piggy" charges. Subsequently, Geach returned to the Superintendent's office where she claims she related the reprimand and "shit list--Miss Piggy" episode. Don Smalley gave hearing testimony that shortly after the 5/29 MMEA meeting, Donna located he, his wife and another; that she was very upset and crying; and that she told him of the reprimand and that

McIntosh called her "Miss Piggy" and made the ³⁸¹ "shit list" reference.

The superintendent notes that on the initial appearance, Geach was too mad, crying and not in control so as to proceed. Tuttle testifies that during the subsequent conference they reviewed the situation several times, though his testimony never clearly informs precisely how Donna defined the issue to him. He asserts that at "the end" she said "He didn't call me Miss Piggy." Commissioner Stammerman questioned, in effect, if "in the beginning" she made the charge. Tuttle responded "She was confused" on the issue. Further on this point, the record makes Tuttle say that we went over the matter several times because of the "serious charges as to 'Miss Piggy'...and "out to get you..." It appears the record contains no evidence touching on the "shit list" allegation. Chapter 17A official notice is accorded contested case file 81-4 communique of 8/24/81 from Superintendent Tuttle to agency, wherein prior to proceedings on issue of hearing advisability, the superintendent argued the complaint was entirely frivolous and "Donna Geach is a liar."

Marathon Man:

In view of earlier testimony that Geach must forgo public criticism in favor of proffering gripes directly to the administration, the association placed in evidence its Exhibit "1", April 27, 1981 reprimand of Don Smalley:

"Your question of substitute teachers payments this morning was very unprofessional in my opinion. Your concern should lie in the welfare of the students in your classes, not in how a substitute teacher was assigned and paid.

Understand substitute teaching assignments are the responsibility of the administration. Substitutes will be assigned as needed and paid for assignments completed as seen fit." (sic)

Smalley, with the principal's approval and assistance, received board leave to participate in the April 1981 Boston Marathon. McIntosh stated that the teacher was, in some respects, unsatisfied with the terms of board leave and he (principal) felt this factor intensified the confrontation resulting in the reprimand. McIntosh several times indicated he was irritated by the lack of gratitude. Prior to leaving for Boston, respondent had identified a substitute and Smalley tailored lesson plans for this person. The substitute handled the involved classes for slightly more than a day; at this time he was assigned by respondent to construction work; and for the remaining days of leave (about 3) staff covered for Smalley. Home from Boston on the weekend, Smalley learned something of the substitute situation and was irritated. Early morning on the first school day back (4/27/81) and with McIntosh in to congratulate him, Smalley inquired as to how his classes were covered, what the substitute situation was and if or how the substitute was paid. The instructor, conceding he was irritated about the substitute issue, said that when he mentioned pay the administrator became noticeably angry and stormed out repeating "Go to hell--get screwed." The teacher shortly proceeded to McIntosh's office to discuss the matter but was told

there was nothing to discuss. Respondent recalled there was an early board session and that Smalley said he would go there. When the teacher arrived the session had just finished and he was informally advised to attend the next meeting. Staff educator Garland was still present in the room and Smalley asserts he told him about the confrontation. Garland testified essentially to the facts related by Smalley above, including the alleged "go to hell--get screwed" comments. That same morning the reprimand was placed in Smalley's file.

Complainant's Exhibit "2", dated May 12, 1981, is a letter by Smalley to McIntosh wherein the teacher notes that his substitute concerns were motivated by his interest for Mar-Mac students; it was the principal who acted unprofessionally; and the reprimand should be nullified. In the course of the letter, 15 days following confrontation, Smalley makes specific reference to the alleged "go to hell--get screwed" exit. At this time, the letter became a portion of Smalley's and respondent's efforts to resolve the problem. McIntosh testified that he considered the letter but did not affirmatively react one way or another to the "go to hell--get screwed" portion. Such was not denied at that time. In his informal response and by hearing testimony, respondent denies he used these terms. McIntosh subsequently removed the reprimand and both educators apologized.

Findings of Fact

Issue One

1. The commission finds that approximately mid-Spring of 1981, while socializing at the Pink Elephant, Donna Geach, Mar-Mac music teacher, verbally criticized proceedings of the Mar-Mac district board, administration and principal McIntosh, calling into question the administrative aptness of the latter. Characterization of the educator's comments lack any proof as to factual detail but were uttered in the context of and related exclusively to actions and decisions concerning 1981 district staff reduction efforts.

2. It is also found that the method and manner of allocating school funds for the purpose of staff reduction is a legitimate subject of public concern.

3. We find further that the speech was entirely conclusory, with no showing of erroneous, knowingly false or reckless utterances by Geach.

4. It is additionally found that there is no proof that the supper club comments interfered with Geach's teaching performance or caused disruption of school operations.

5. Finally, we find that the evaluation effort by McIntosh, relating to the Pink Elephant opinions, was, inter alia, in retaliation for speaking and constituted a proscription to work or speak but not both.

Issue Two

1. Agency findings "1", "3" and "4" under Issue One are incorporated herein.

2. The agency also finds that the extra school Pink Elephant conduct was not a proper subject of evaluation, unless it interfered with teaching performance and/or disrupted school operations. The record contains no proof of either condition.

Issue Three

1. The evidence reflects that teacher association meetings were permitted on district property other than during the school day or school hours.

2. At approximately 3:30 p.m. on May 29, 1981, at the conclusion of a principal's staff meeting with Donna Geach present, McIntosh proclaimed the school year closed and dismissed staff.

3. Shortly subsequent to school closing, members of the teacher's association gathered in Geach's room for a business meeting into which at about 3:45 p.m. entered respondent; to Geach's inquiry as to the reason for his presence he remained mute; and during the remainder of the session and until all others but Geach had departed, he engaged in no verbal interaction with association members.

4. The proof shows that at the point of this intended confrontation with Geach, McIntosh knew he was leaving Mar-Mac at the close of the 1980-81 principalship; and that this intended encounter would occur in the final moments of his jurisdiction as to this teacher; and it followed by some two weeks his retaliatory evaluation efforts found in paragraph five under Issue One above.

5. All MMEA members having departed, McIntosh sharply reprimanded Geach for conducting association affairs on "school time"; he told her she was on his "list"; and that he would "write her up" for further such violation, all of which the record shows caused Geach to become visibly upset, distracted and very agitated.

6. Finally, upon McIntosh's departure the teacher followed into the hall, wherein Mar-Mac janitor Starkey was present and heard Geach address McIntosh in a very loud voice "something about calling her 'miss piggy.'"

Issue Four

1. By this reference we incorporate and find as fact the undisputed evidence as to the Boston Marathon - substitute issue set forth above under "Facts." Respondent, prior to this incident, had a trouble free Smalley relationship.

2. At the time of the April 29, 1981, encounter in Smalley's room, when the teacher inquired of McIntosh as to coverage of the math courses and how the substitute was used and paid, the principal became angry and rushed from the area screaming. Later that day, he issued a reprimand asserting matters of substitutes and payment therefore are not the concern of teaching staff and Smalley acted unprofessionally by interjecting himself into the area.

3. During efforts some two weeks later to expunge the reprimand, McIntosh was confronted with and considered a Smalley document wherein the administrator is made to have sworn upon his April 29, 1981 exit from Smalley's room. Respondent, at the hearing, concedes that he read and understood the exit assertions and made no response thereto. Reprimand was withdrawn.

Legal Conclusions and Criteria

The relevant legal conclusions with statutory and judicial authorities are fully stated in each division of the "Discussion" following. Commission criteria of profession practices with involvement are set forth as an attachment to this decision.

Discussion

I

STAFF CRITICISM OF OFFICIAL SCHOOL ACTIONS - THREAT TO TERMINATE

In accordance with the Practices Act, teaching profession members have a special duty to safeguard the laws governing operations of a school community. This, of course, includes national fundamental law applicable to public schools (e.g. fifth and fourteenth amendment hearing requirement for student suspension -see Goss vs. Lopez, supra; Kempe vs. Rockwell, commission case no. 79-5, September 1980). The inquiry here is whether the supper club response by the school administrator is consistent with this principle.

A

First Amendment - State Action

Though elementary, the free speech Amendment⁵ protects citizens (probably also aliens) against proscribed actions of government. A public school administrator, in furtherance of contractual duties, is an agent of government engaging in state actions (cf. Zoll vs. Eastern Allamakee School District, 588 F. 2d 246 (8 Cir. - 1978)). Moreover, in adjudicating the Chapter 272A supper club issue this agency is also engaged in state action and subject to the constraints of the Amendment.

B

Protected Speech Clause - Educators

Notwithstanding the constitutional status of Geach's speech, official action (evaluation Exhibits "3" and "4") requiring teachers to voice school complaints through district channels and stand mute on adopted decisions of

5. "Congress shall make no law ... abridging the freedom of speech..." Amendment 14, U.S. Constitution, provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

board and administration is contrary to the speech Clause and invalid under numerous Supreme Court rulings. E.g., Wieman vs. Updegraff, 344 U.S. 183 (1952); Keyishian vs. Board of Regents, 385 U.S. 589 (1967); see also Pred vs. Board of Education, 415 F. 2d 851 (5 Cir. - 1969):

"The theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected."
Keyishian, Supra, at 605-606.

And:

"To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court." Pickering vs. Board of Education, 391 U.S. 563, at 568 (1968).

As to school items of public interest (e.g., allocation of resources - Pickering and Zoll, supra), educators have the same First Amendment protection as persons at large, in some instances being accorded favorable speech status consequent on a position generating intimate knowledge of school operations. Pickering, Supra; Zoll, Supra; Pred, Supra (at 855):⁶

6. There may be some situations, not here relevant, where it is permissible to restrict an educator's otherwise protected speech status. Cf. Pickering, supra, footnote 3, p. 576:

"It is possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible ground for dismissal. Likewise, positions in public employment in which the relationship between superior and subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them can also be imagined. We intimate no views as to how we would resolve any specific instances of such situations, but merely note that significantly different considerations would be involved in such cases."

Cases such as Zoll and Pickering themselves do not include teacher - school administrator tie as of such a personal and intimate nature - see text following.

"[I]n a case . . . in which the fact of employment is only tangentially and insubstantially involved in the subject matter of the public communication made by a teacher, we conclude that it is necessary to regard the teacher as the member of the general public he seeks to be.

X X X

"[T]he question whether a school system requires additional funds is a matter of legitimate public concern on which the judgment of the school administration, including the School Board, cannot, in a society that leaves such questions to popular vote, be taken as conclusive. On such a question free and open debate is vital . . .

"Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions . . ."
Pickering, supra, at p. 574, and pp. 571-572.

Criticism, where protected, has been sustained as against the board, individual board members, chief school officers, and principals.⁷ Research does not reveal any special relevance as to the nature of the forum selected for verbal or written expressions.⁸ Content is, however, important, to which subject we proceed.

7. Zoll, supra (all of above); Pickering, supra (superintendent and board); McGill vs. Board of Education, 602 F. 2d 774 (7 Cir. - 1979) (Principal); Givhan vs. Western Line Consolidated Schools, 439 U.S. 410. In Givhan, p. 415, note 3, the plaintiff teacher's comments to her school principal consisted of insulting, hostile, loud and arrogant, petty and unreasonable demands, according to the defending school district. Her complaints involved employment policies and practices at the school which she conceived to be racially discriminatory in purpose or effect. However, the Supreme Court considered her private comments and expressions of opinions to the principal to be protected under the First Amendment.

8. Letters to news media, Pickering and Zoll, supra; "downtown," Simineo vs. School District No. 16, 594 F. 2d 1353 (10 Cir. - 1979); teacher association activity, Pred, supra; Giehinger vs. Center School District No. 58, 477 F. 2d 1164 (8 Cir. - 1973); teacher lounge and board meeting, McGill vs. Board of Education, 602 F. 2d 774 (7 Cir. - 1979).

C
Speech Protected - Matters Public Concern

Despite an educator's extensive privilege of comment, not all speech is "free." The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. Pickering, Supra, at 568. An analysis of Pickering, supplemented by its progeny, provides a basis to decide the constitutional status of Geach's school criticism.

The teacher in Pickering, in a letter to a newspaper, publicly criticized the school board's allocation of funds between educational and athletic programs and the way in which the real reasons for seeking additional tax revenues had been glossed over by the board and superintendent. The board dismissed the teacher on the ground that his letter was deliberately false and misleading and therefore an unjustifiable attack upon the board and the school administration, and disruptive of the operations of the school district. The dismissal was sustained by the state courts.

In reversing, the Supreme Court held (1) that a teacher retains the right as a citizen to comment on matters of public concern; (2) that to the degree such commentary is substantially accurate, it provides no grounds for dismissal absent a showing of disruption of the teacher's classroom duties or the regular operation of the school, and (3) that, even if the commentary is inaccurate, a showing of disruption is still required unless it can be proved that the statements in question were knowingly or recklessly made. The Court determined that Pickering's letter contained inaccuracies but that these were not knowing or reckless and that no disruptive effect had been shown. To permit comparison of the supper club speech and the plaintiff's letter, the reader is referred to the four page reproduction of Pickering's comments (391 U.S. at 563-566).

In addition to the issue of allocation of funds (see also Zoll, supra), protected speech has been accorded educators as to the following: (1) District ability to pay increased salaries, Giehinger, supra, 477 F. 2d at 1167; (2) Advocating need of collective bargaining, McGill, supra, 602 F. 2d at 680; (3) Participation in teacher's association to promote teacher concerns, Pred, supra, 415 F. 2d at 859; and (4) Teaching methods, Simineo, supra, 594 F. 2d at 1356.

D
Termination Threat - Chilling Free Speech

It has been argued that teachers Pickering and Zoll were actually fired because of speech, while Geach was commanded only to refrain from comment or hazard termination. Such distinction misapprehends the reach of the First Amendment. See e.g., Pickering, supra, at 572 (" . . . it is essential that they [teachers] be able to speak out freely on . . . questions [of finance] without fear of retaliatory dismissal;" emphasis ours); McGill, supra, at p. 780 (retaliatory transfer to another school - "The test is whether the adverse

action . . . is likely to chill the exercise of constitutionally protected speech . . . This chilling effect can be accomplished through an unwanted transfer as well as through outright discharge."). Finally, cf. Pred, supra, at 856:

"[Permitting retaliation] would, in the area of First Amendment rights, be to throw out this Hobson's choice: speak or work. Moreover, the execution of any such policy through discharge or non-reemployment would have both a specific and a general impact. It would, as to the individual concerned, be to cut him off from work and income. But to others the consequence might well be more serious. It would be the warning that others would suffer the same fate so that eventually there would be workers, but not speaking or feeling free to speak, they would be silent workers. And in the teaching community we must recall that threat of sanctions may deter almost as potently as the actual application of sanctions. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being prescribed." (Emphasis ours.)

E
Instant Case

Initially, we accept respondent's theory that the comments were public utterances.⁹ In deciding if the school criticism involved a "public concern" (Pickering), we note that McIntosh correlates his dramatically acquired staff problems with winter staff reduction activity. While his efforts sought a board acceptable teacher reduction plan, Geach, as MMEA president, had differing official concern for staff interest. Against this background and consistent with respondent's report of the Pink Elephant hearsay,¹⁰ we find the totality of the speech proscribed related to staff reduction. Comparable to the allocation of funds in Pickering or district ability to allocate additional funds to teachers in Giehinger, the Mar-Mac reduction effort involved vital issues of expending less resources while retaining quality educational service. That subject was undoubtedly of "public interest" under Pickering and within the zone of protected speech.

9. The record is consistent with but a private conversation. As noted above, however, free speech rights may attach to comments directed at one individual. See Givhan vs. Western Line Consolidated Schools, 439 U.S. at 415, considered in footnote 7 above.

10. Recall that the record, without factual detail, makes Donna (1) criticize actions by board and administration regarding staff reduction; and (2) comment that McIntosh is a poor principal.

Unlike the factual analysis of the Zoll and Pickering editorial letters, the question of erroneous, knowingly false or reckless speech is meaningless in the context of these two nonspecific opinions.¹¹ Moreover, where one seeks to restrain otherwise protected discourse of public concern the burden rests with the one claiming exemption from the speech Clause (Pickering, supra, at pp. 573-574). In this regard, the record reflects no evidence that supper club opinions "impeded the teacher's proper performance of . . . daily duties in the classroom . . . or . . . interferred with the regular operation of the schools generally" (Pickering, at pp. 572-573).

Accordingly, the evaluation actions of the principal infringed upon First Amendment rights accorded educator Geach. To the extent that such action was known generally to Mar-Mac educators and supported by the school,¹² its constitutional harm is indeed much broader, with the propensity of chilling staff speech so as to have workers but not speakers or speakers without work. Pred, supra, at 856. Perhaps, without contest, we abide the prescriptions of the Generals -but as to educators who must speak to teach and students who must inquire to learn, it is alien and counter productive to the prime goal of teaching and learning to command conformity with all actions of those entrusted with public authority or suffer retaliatory loss of the right to teach or learn.

In closing, we can speculate that the supper club comments might have involved specific factual assertions with possible Pickering comfort to respondent. Because of the serious evaluation action, sound administrative practice and fairness might have uncovered from Geach and others, at the time, a more accurate and detailed summary of the issue. Respondent, however, in evaluating and at our hearing, expressed satisfaction with his "inquiry" because he trusted "the word" of scant hearsay, fifty percent of which was not only compounded but entirely authorless. While complainant had the burden of showing the protected speech issue, it was incumbent on the administrator to take the teacher beyond coverage of the Amendment.

II

USE OF EVALUATION PROCESS TO REPRIMAND AND PROSCRIBE NON-SCHOOL CONDUCT

Apart from the protected speech problem, we find that it is generally contrary to Chapters 279 and 272A to use the evaluation process as a means of censure, proscription and retaliation against most out-of-school conduct. We stress the finding is strickly limited to evaluation efforts without opinion as

11. "[A]n accusation that too much money is being spent on athletics. . . reflects a difference of opinion between Pickering and the board as to the preferable matter of operating the school. . ." (p. 571).

12. Hearing testimony of superintendent Tuttle reflects he would not "personally use the item" but supports such evaluation action by his administrators.

to other administrative or district actions. Moreover, the actual Chapter 279 evaluation instrument (here Mar-Mac's) is not of our concern; of concern is only the professional consequences of how teaching profession members use the process to deal with extra school practices.

The evaluation prescribed by statute has essentially a twofold object: (1) Remediation of borderline or unacceptable performance; and (2) Discovery of and support for removal of one whose performance is ineffective or whom is otherwise professionally unfit to teach in the district. Accordingly, relevant factors for evaluation include: actual classroom performance, methods and student control; physical and psychogenic aptness; and, an overall propensity to cope with the entire school milieu without unduely distracting the harmony of its operations.

This is not to say that extra school conduct can never have relevance to the evaluation process. Such conduct may be germane if it directly affects job performance; substantially compromises the educator's image or creditability, with consequential loss of effectiveness; or causes not insubstantial disruption of school operations. Compare Erb v. State Board of Public Instruction, 216 N.W. 2d. 339 (Iowa - 1974); Muscatine Schools vs. Blaskovich, commission case 81-1 (August 1981); see also Pickering, supra, Division I at pp. 572-573. To illustrate a possible exception to the rule Suppose an educator moonlights at a nearby club, legally performing nude. Should such practice acquire notoriety at school and in the community and perhaps be observed by students, an issue of compromised effectiveness might arise. Such question is, however, entirely a factual one, with state action predicated, alone on felt moral grounds, being invalid. Compare Erb, supra, wherein the state, for teacher Erb's adultery, revoked the right to practice teaching (216 N.W. 2d at 343-344):

"[U]nder Code Section 260.23, a certificate can be revoked only upon a . . . showing of a reasonable likelihood that a teachers retention in the profession, will adversely affect the school community."

In setting aside revocation, the Iowa Court found no substantial evidence that the nonschool sexual liaison was relevant to Erb's teaching ability or effectiveness. As noted in Division I above, there is no evidence that the matters covered in evaluation items 20 are related directly or otherwise to teaching performance or that they caused school disruption. Accordingly, they were irrelevant to the evaluation purpose and it was professionally impermissible for the administrator to use the statutory tool as both a reprimand and retaliation for the supper club conduct.

Since a purpose of evaluation is potential removal of nonremediable educators, the decisions defining what constitutes grounds ("just cause") to terminate for fault are relevant to the issue of what is a proper subject of evaluation. We quote from a few:

"[I]n the context of teacher fault a just cause is one which directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students. It relates to job performance including

leadership and role model effectiveness. It must include the concept that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance. On the other hand, "just cause" cannot include reasons which are arbitrary, unfair, or generated out of some petty vendetta." Briggs vs. Hinton Board, 282 N.W. 2d 740, at 743 (Iowa 1979). Accord, Youel vs. Ft. Madison Board, 282 N.W. 2d 677 (Iowa 1979).

And

"[J]ust cause assumes facts which bear a relationship to the teacher's ability and fitness to teach and discharge the duties of his or her position." Powell vs. Board of Trustees, 550 P. 2d 1112, at 1119 (Wyo. Sup. Ct.-1976).

And

"[It is] some substantial shortcoming which renders continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as good cause for his not longer occupying the place" Tudor vs. University Civil Service Merit Board, 267 N.E. 2d 341, at 343-344 (111. App.-1977).

III

MMEA MEETING -
MARATHON INCIDENT

A

Name calling:

As a proposition of professional concern, Chapter 272A does not admit of school interactions by educators contaminated by "street" utterances or hurtful personal characterizations. Cf. Torres vs. Aceto, commission case 80-17, March 1981 (use of "spic" to characterize hispanic students); Van Roekel vs. Cram, commission case 80-12, November 1980 (derogatory references to students). Such may be "fighting words"; are alien to a profession struggling to keep its charges off the "street" and at the alter of English; and can be psychologically hurtful where the mark is a reference to personal or bodily traits. In the instant proceeding, some such name calling is in sharp dispute. Except for one comment as to Geach, our view of the underlying substantive issues make it unproductive and of little consequence to decide hard issues of creditability and veracity. The hearing evidence does not warrant the official district charges that Geach is lying as to the "piggy"

allegation. While she may have been mistaken or confused as to what was said (Tuttle testimony), her conceded acute distraction of the moment renders it absurd to suppose that she intentionally and knowingly invented the essence of the allegation for Starkey and others. In reaching this conclusion we find the janitor's testimony creditable as to the reported Geach assertion.

B

MMEA MEETING:

As our findings of fact imply, McIntosh went to this meeting intending to cause and did cause Geach discomfort. Moreover, his actions were professionally unjustified. Even assuming that under some labored construction traditional "school time" or "school hours" survived the school closing edict, equity and fair play cannot accept the administrator's rationale for or sanction his actions. We can understand something of the hurt generated by his perception of wrong conduct aimed at him; but, as between teaching profession members, Chapter 272A does not acknowledge resort to abusive self help. It is especially necessary, because of the superior position of an administrator, that he or she refrain from inequitable treatment of staff members.

C

MARATHON:

This issue is not of pressing importance to the parties in light of the mutual apologies. In keeping with the extended discussion of Division I above, the questions regarding course coverage and use and pay of a substitute appear to be of public concern and about which Smalley had a right to inquire. The tone of the reprimand has some of the flavor of the "be silent" Geach evaluation comment (Exhibit "4"), though we cannot escape the irony of McIntosh's testimony that Donna should bring her complaints to him. We do not consider or intimate First Amendment involvement with the Marathon incident. We do, however, believe that McIntosh's response to Smalley was overreaching and impermissible.

Decision

Despite the foregoing criticism, we acknowledge that McIntosh has performed competently as an educator and with substantial merit in school administration. Until the anxiety generating evils of reduction arose and apart from ongoing school contentions with Geach (not entirely unjustified), he had good staff and school relations and was valued throughout the Mar-Mac years by board and administration. While not of record, such is true of the current employer. As to the numerous transactions with this agency, the respondent has proceeded with candor and quality professionalism. Perhaps these observations are, to some measure, acknowledged by attorney James Sayre's concession that teaching certificate involvement is not warranted. Such is, of course, a decision for the commission but we agree. At the conclusion or the observations following immediately upon which we lay stress and notice, the commission by unanimous action issues official reprimand and warning.

By issuing this reprimand, it is not to be understood that we regard lightly constitutional protections or will restrain from certificate action where indicated. The right to speak, examine, criticize and dissent are crucial to any meaningful teaching and learning process, a value shared by western civilization since the time of Socrates 2400 years ago. To the extent that administrative authority is valued highly and demands priority allegiance, it is axiomatic that the process suffers.

In our opinion, most of the issues here dealt with (including to an extent the excluded student problem), arose from an excessive concern for and a perceived threat to administrative authority. As we have seen, neither teachers or students must perform unheard; nor, as noted by the high Court in Des Moines' Tinker, do they shed their rights "at the school house door?"

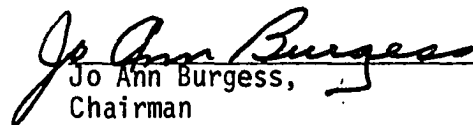
All of our professional criteria cited in the attachment are involved with one or more issues and we find each to have been violated. All objections and other like matters such as motions not previously disposed of are overruled or otherwise denied.

Reprimand

To Craig McIntosh:

In accordance with the authority of Section 272A.6 of The Code and our findings and adjudications herein, your retaliatory actions relating to the supper club comments and other actions toward Geach (MMEA meeting) and Smalley (Marathon incident) were in violation of the various agency criteria attached hereto, such violations constituting unprofessional practice. You are hereby officially reprimanded and warned to exercise special care to safeguard and protect the rights of educators to free expression and legitimate job security. You should note that this reprimand and warning is less onerous than the potential of Section 272A.6 or the financial burden imposed by cases such as Zoll.

Dated: December 16, 1981


Jo Ann Burgess,
Chairman

Attachment

The following agency criteria of professional practices are relevant to and have involvement with the issues above (Iowa Administrative Code, Professional Teaching [640], Chapters Three and Four):

Rule 3.1(1)(a):

". . .A violation of any of the school laws of Iowa constitutes a violation of the criteria of the Iowa professional teaching practices commission."

(National and state constitutional mandates applicable to public school operations, including Amendments I and XIV, constitute Iowa school law).

Rule 3.3(2)(c):

"The educator believes that patriotism in its highest form requires dedication to the principles of our democratic heritage. He or she shares with all other citizens the responsibility for the development of sound public policy and assumes full political and citizenship responsibilities.

X X X

"c. Shall not interfere with a colleague's exercise of political and citizenship rights and responsibilities."

Rule 3.3(3)(a), (b) and (c):

The educator believes that the quality of the services of the education profession directly influences the nation and its citizens. He or she therefore exerts every effort to raise professional standards, to improve his/her service, to promote a climate in which the exercise of professional judgment is encouraged, and to achieve conditions which attract persons worthy of the trust to careers in education. In fulfilling his/her obligation to the profession, the educator:

a. Shall not . . . interfere with the participation or nonparticipation of colleagues in the affairs of their professional association.

b. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities.

c. Shall not use coercive means or promise special treatment in order to influence professional decisions of colleagues.

Rule 4.5(3):

"Each administrator shall . . . (b) adhere to and enforce school law . . ."

Rule 4.7(1):

"Each educator shall: (a) create an atmosphere that fosters interest and enthusiasm for learning and teaching.

X X X

"(c) encourage expression of ideas, opinions and feelings."

Rule 4.8(2), (6) and (7):

"In communicating with students, parents and other educators each competent educator, within the limits prescribed by her or his assignment and role, shall: . . .

"2. Use language and terminology which are relevant to the designated task.

X X X

"6. Consider the entire context of the statements of others when making judgments about what others have said.

"7. Encourage each individual to state her or his ideas clearly."

Rule 4-12:

"Human and interpersonal relationships. Competent educators maintain effective human and interpersonal relations skills and therefore:

"1. Shall encourage others to respect, examine, and express differing opinions or ideas. . . .

3. Shall not show disrespect for or lack of acceptance of others.

4. Shall provide leadership and direction for others by appropriate example.

5. Shall offer constructive criticism when necessary. . . .

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

APPENDIX R. IPTPC HEARING RECORD 82-7

Iowa Professional Teaching
Practices Commission
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Iris Kaufman,
Complainant

Vs.

Phillip England
and
Del Colburn,
Administrators,
Benton Schools,
Respondents

Case 82-7

Hearing Decision

Statement of Case and Jurisdiction

Iris Kaufman, teaching profession member (Code, 272A.2), filed complaint on February 17, 1982 alleging respondents engaged in unprofessional acts and practices relating to the reputed termination of her 1981 teaching agreement with Benton Schools. Subsequent to inquiry and recommendation by agency counsel, the commission, on March 5, 1982, assigned the matter for contested case proceedings in Cedar Rapids on April 23, 1982. Hearing notice having been served on all parties and respondent's answer filed, the matter came on for hearing at 9:00 a.m. on such date in the board room of the Cedar Rapids School District. All commission members were present, except William Stammerman who does not participate in this decision. Iris Kaufman appeared and was represented by Des Moines attorney, James Sayre. Messrs. England and Colburn were present and represented by Cedar Rapids counsel Brian Gruhn and Minor Barnes. In the course of proceedings, counsel proffered motion to dismiss as to respondent England; ruling thereupon was reserved; and the following decision effectively resolves that motion. All objections to evidence, motions and other like matters undisposed of at the hearing are hereby overruled or denied.

The Iowa Professional Teaching Practices Act ("Practices Act"--Chapter 272A, Iowa Code) invests the agency with personal jurisdiction over members of the teaching profession (Section 272A.2), to which England, Colburn and Kaufman all belong. In relation to a contested case proceeding (see Iowa Administrative Procedure Act--Chapter 17A, Iowa Code), commission subject matter jurisdiction involves a determination as to whether Chapter 272A professional criteria have been violated (see Section 272A.6 and Chapters three and four, Iowa Administrative Code, Professional Teaching [640]). In this regard, the pleadings and hearing evidence generate a substantial issue of professional criteria involvement consequent on alleged practices of respondents relating to Kaufman board action. Finally, under Rule 640-2.1 (a) (Adm. Code, *supra*), complainant has standing to complain. Accordingly, personal and subject matter jurisdiction exists.

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Statement of Facts

I
Background

Iris Kaufman, a twenty-eight year old native of Crawfordsville, Iowa, completed teacher preparation at UNI and seemingly some graduate study, the details of which are not of record. Subsequently, she was awarded state teaching certification (DPI certificate 184755--1976-1986--elem., endorsement 10).¹ Her initial teaching assignment was at South Tama, from which she resigned at mid-year for reasons of alleged poor health and pending marriage (respondent's exhibit "A"). Exhibit "A" recites knowledge then by Kaufman of need for board approval for release.

In 1978, Iris joined the professional staff of the Benton School District which she served for three continuous years (1978-79; 1979-80; 1980-81). Apart from medical issues presently noted, there is, of record, nothing remarkable concerning teaching performance during this time. Respondents England and Colburn both affirm they had no substantial problems with the teacher. On April 1, 1981 complainant executed a modified contract (exhibit "5") agreeing to serve Benton schools during 1981-1982 as resource-room teacher, such service commencing August 20, 1981. As the result of this agreement and incorporation of the master contract (exhibit "9"), Kaufman, upon reporting for service on August 20, 1981, was mandatorily eligible for accumulated sick leave and major health and disability insurance. In this respect, exhibit "10" reflects that Iris was entitled to 19½ days of sick leave. In addition to the nondiscretionary contractual benefits, the master contract yields the potential of other leaves of absence (see exhibit "9", pp. 13-15; e.g., "special leave" and "personal leave", the latter also mandatory with conditions).

II
Medical

Respecting Kaufman's health, hearing evidence reflects a medical judgment as to the onset of mental illness in 1975 (Dr. Moucharafieh testimony and exhibits "1" and "2"). Despite impressions by Iris and nurse Geistlinger of "bipolar disorder" (i.e., manic-depressive illness--see exhibit "1"), the psychiatric diagnosis is major depression, recurrent and cyclical (Dr. Moucharafieh and exhibits "2", "3" and "4").² Prior to August of 1981, the disorder was treated

1. Respecting Kaufman's eligibility to serve as a L.D. teacher, there were numerous hearing references to her "temporary certificate" status or "authority to be certified." As noted in the text, state teaching certification was never an issue, the inquiry being rather one of state approval or temporary approval to serve in special education.

2. While this disorder is indicated by earlier medical data and treatment, it is clearly articulated by Dr. Sana Moucharafieh, medical director and staff psychiatrist, Community Mental Health Center, Cedar Rapids. Such diagnosis was confirmed a week later by the psychiatric department, University Hospital, Iowa City, the same medical facility where Moucharafieh completed her residency in psychiatry.

by several physicians, primarily with anti-depressant medicaments; inpatient episodes were required either to treat the illness itself or to manage collateral problems caused by medication; and something like an acute phase of the cyclical pathology had a role in Kaufman's resignation at South Tama.

Off medication and complaining of depressed mood since May of 1981, Iris, on August 19, 1981, was seen at the Mental Health Center, Linn County, on emergency status by nurse Dee Geistlinger. Reporting a patient anxious about the start of school in the a.m. and wanting medication, Geistlinger recites that Kaufman was alert and logical in communication and, inter alia, complained of the following:

"Patient does report having decreased concentration and that she has difficulty remembering things. She states that she is concerned especially about her concentration and her memory with school resuming tomorrow. She also states that she has to push herself a great deal to do things and that she would just prefer to stay in bed and not have to be up and socializing." (Exhibit "1").

Kaufman was started on medication and advised to see Dr. Moucharafieh on August 25, 1981.

On Friday, August 21, 1981 (2nd day, teaching contract), Iris returned to the center and related to Dr. Moucharafieh the presences of low mood and crying spells; perceived inability to cope with teaching; and a communication that morning at school of her desire to resign (exhibit "2"; also doctor's hearing evidence). The medication started two days before was adjusted; she was earnestly counseled to remain with her teaching position; and the following clinical impression was recorded (exhibit "2"):

"Mental Status Examination:

An age apparent, petite brunette who is pleasant; cooperative. Mood is definitely depressed. There is some degree of psychomotor retardation. Cries easily. Expresses ideas of guilt and worthlessness. Expresses some suicidal thoughts but no actual plans. Complains of difficulty concentrating and loss of interest. Denies any psychotic symptoms. Sensorium is clear. Thinking is logical and goal oriented. Insight and judgment are good. So is motivation for treatment.

With return set for August 27, 1981, the school nurse requested and Dr. Moucharafieh saw Iris on August 25 shortly after the purported resignation. The progress note of the visit comments, in part, as follows (exhibit "3"):

"Iris expressed some relief about not having to worry about the job for the time being. She continues to feel very low even though she started taking the nardil as prescribed. She has not had any effects whatsoever so far. She does not report any side effects. Continues to have extreme difficulty concentrating, extreme difficulty making decisions, no ambition and continues to need sleep. The only social contact that she

has is with her boyfriend who she talks with or sees on a daily basis. The patient denies having any suicidal thought or plans. She also seems to lack confidence that nardil is going to help her at all."

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Shortly thereafter and within several hours of board action relating to her contract, Kaufman entered University Hospital acutely agitated, hallucinatory (auditory--hearing voices), and psychotic (see e.g., Moucharafieh and Kaufman testimony). The psychosis was brought under control with haldol; the underlying depression treated with electro-convulsive therapy (shock treatments); the patient introduced to lithium carbonate; and, on October 10, 1981, was remanded to Dr. Moucharafieh. Respecting job separation, the latter testified that while the major depressive intellectually knows the nature of important transactions such as resigning, motivation and decision-making ability are so distorted by the illness that the patient is unable to comprehend consequences and, in view of the acutely depressed mood and motivation, just doesn't care. Feeling worthless and inability to cope, the depressive is easily influenced and may experience relief in withdrawing from anxiety generating responsibilities. The witness concluded that during the relevant period, Kaufman was so incapacitated by the illness as to prevent effective and meaningful participation in the transaction involving her teaching contract. Moucharafieh gave her professional medical judgment that Iris had no business engaging in job separation transactions.

III

Aug. 20-27--Resignation Issue

In considering the events relating to complainant's putative contract termination, the record reflects important facts about which there exists no substantial dispute. First, respondent Colburn and school nurse Mary Lou Jacobe had actual prior knowledge of Kaufman's psychogenic involvement requiring psychiatric care and use of psychotropic drugs. Colburn, her building administrator for 1980-1981, affirmed that every or every other month, with emphasis as to the spring of 1981, he consulted with the teacher (sometimes also Jacobe) about health status. Conversely and prior to the week at issue, respondent England's prior knowledge of any problem is reported as one conversation in the spring of 1981 with Colburn, the latter noting a medical issue but without elaboration.

Secondly, there is nothing in our record to support an inference that respondent's actions were motivated by some extrinsic factor, as, for example, past teaching performance of the educator. Any such suggestion lacks adequate support. Moreover, as respondents note principal Colburn, in responding to the problem, was not without concern for the teacher and did make early efforts to caution her against resigning.

August 19-23, 1982:

Reestablished on depressive medication ordered by Dr. Moucharafieh the previous day, Kaufman reported to school in accordance with her contract on Thursday, August 20, 1981. Apart from greeting Colburn at Computerland, we know only that she complains of not feeling well and informed nurse Jacobe that she desired to see her. Upon learning Friday morning that Iris was upset and crying, the principal together with the school nurse conferred with the teacher. At least to Jacobe, Kaufman appeared depressed; she was anxious about the inability to cope with school; and articulated the idea she should resign. They counseled her against resigning and urged her instead to return to the mental health clinic.

Despite an accumulated four weeks sick leave mandatorily applicable, such was not invoked as relevant by Colburn but instead he advised complainant to take "special leave" with pay. In response to interrogation by counsel as to whether at any time (referring to events 8/21 through England meeting, 8/25) he encouraged Iris to consider sick leave as an alternative, the principal noted that Iris did not specifically raise the issue and, in part, concluded:

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"That [sick leave] didn't seem...pertinent. That wasn't something that she was requesting or didn't seem... something that she wanted. I don't feel that it's my position to think for people. I'll try to help...but the issue was to resign or not..."

Though not entirely clear, it appears the Friday conference concluded with a loose understanding that Kaufman would consider the matter carefully over the week-end and advise Colburn on Monday as to her intentions. The evidence indicates that the principal did admonish the teacher that the needs of the school and students required expeditious action on her part. Because he was very concerned about Kaufman's condition and deportment at this time, he directed nurse Jacobe to go with her to the clinic. At some point on Friday, Colburn also phoned respondent England to inform him Kaufman was having a hard time, not feeling well and talking resignation (England deposition). The medical report relating to this visit is summarized above.

August 24, 1982:

Though Kaufman knew she was expected at school Monday with a decision on the job issue, she continued depressed; fearful of her ability to cope; and feeling unable to decide such issue, she remained at home. At 10:45 a.m. that day (8/24), Colburn inquired as to whether Iris had reached a decision in keeping with Friday's understanding. He testified that "she was very confident" about her response "to resign." Accordingly, he requested a letter quickly in order to expedite a replacement and indicated he wanted her to deliver the resignation to school yet that day. The record does not make Colburn question the teacher as to the progress of her known depressive condition and whether sick leave might be relevant as a temporary option. The perceived "confidence" yielded within the hour, Kaufman phoning at noon to announce she would not resign and would return Tuesday (8/25). Colburn responded "what's wrong with this afternoon" and she said she wasn't comfortable but could face the return tomorrow.

Following the 10:45 call, the administrator phoned to inform England that Iris was again talking resignation, whereupon the superintendent said they should meet with her soon. At some point later Monday, Colburn apparently told England of the subsequent "won't resign" call as the latter knew of that call when he met with Iris (deposition--p.15).

August 25, 1982:

Following return on Tuesday to school, Colburn arrived at 8:00 and asked Iris to verbalize her understanding of "why you are here?" Her answer included a need to be and income considerations. He next inquired if she felt that she "should be working with kids" which drew a negative response. Nowwithstanding her last pronouncement not to resign, the principal informed her of a 9:00

meeting with England to consider recent events. Immediately prior to the conference, Colburn refreshed the superintendent as to recent events and admonished him that it was time he "got involved...and found out what was going on" (England, deposition).

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Of the 9:00 conference, Colburn notes that, as on Friday, Kaufman appeared upset and again expressed anxiety about the ability to teach. Briefly paraphrasing her description of the issues, the superintendent inquired "how do we resolve the situation?" In answer, England makes complainant say "I think I should resign." It next appears that the administrators advised the teacher as to the seriousness of the decision and its finality once the board acted, whereupon England asserts he departed.³ The record does not reflect subsequent conference interaction, except to note a Kaufman letter, the reputed resignation (exhibit "6"), was shortly handed to the superintendent in the principal's office. Once again, Iris is observed by Colburn as crying and sufficiently upset to cause him to have nurse Jacobe assist her in returning to the mental health clinic. Respecting the England meeting, both administrators testified that mandatory sick or other discretionary leaves were not considered. The superintendent said that while he gained from Colburn a general perception that Kaufman had problems for which a doctor was involved and though he knew she had vacillated as to resignation, long experience involving personal situations of his teaching staff had convinced him that the sounder and more prudent practice is not to get involved in gratuitous advice as to what a staff member might or should do in such areas. He further asserted, that it was his and the district's practice to generally release all staff who wanted to escape contract obligations. Finally, England testified that from his minimal contact with Iris she appeared sufficiently rational to understand what she was saying and doing.

Subsequently and in the course of her interview with Kaufman, Dr. Moucharafieh obtained consent and phoned respondent Colburn. Exhibit "3", a progress note dated and signed that day (8/25), briefly describes that call thusly:

I chose to call him, hoping that we could have her rescind her resignation and take a leave of absence. Evidently this was not possible as he finds her performance in the last year was not very good and that he had to look at their priorities in the school program."

Upon finding her patient acutely depressed on Wednesday, Dr. Moucharafieh formed the opinion that Iris' mental condition was such that she had no business engaging in a transaction as serious as job separation. She testified that the sole reason for calling Colburn was to advocate that the resignation be set aside and Kaufman be placed on some kind of leave and treatment continued. The doctor asserts that she relayed to Colburn her psychiatric image of complainant's present condition; told him that Kaufman's mental state of mind was such that she had no business engaging in the job decision; and states firmly that she told the administrator her purpose for calling was to advocate rescission of resignation and leave of some kind. She said Colburn expressed recalcitrance for a number of reasons, including school needs; that she recalls some mention of

3. England sharply denies Kaufman's evidence that he remained and dictated a resignation letter. Accordingly, a hard issue as to witness creditability is present. Our disposition of the case, however, does not change regardless of whom is right and we decline, as unnecessary, resolution of the issue.

superintendent involvement; and she finished with the impression that the issue was final. She said Colburn did not advise and she had no idea that it was up to the board.

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When Colburn was first questioned about Moucharafieh's call, he indicated he needed to refer to his notes to aid his memory of the call. Sayre and commission inquiry reflected that not only were the notes not contemporaneous with the August 25 call but concededly were prepared some eight months later shortly before this hearing and at a time litigation was pending. April notes aside, respondent testified that the doctor referred to Iris' condition (not mentioning Moucharafieh's testimony about alleged incapacity); she asked "how I felt about leave"; and on both direct and cross-examination he either could not remember or denied that Moucharafieh advocated rescission of the purported resignation. Responding to attorney Gruhn, Colburn said the whole matter would have been viewed "in a different perspective" if Moucharafieh had "specifically ask[ed] for a leave of absence" rather than asking how "I felt" about leave. Agency counsel reminded Colburn that when he was first questioned by his attorney in this area, he indicated need to refer to notes of this call prepared only days earlier; he also reminded respondent that the medical progress note, concededly made by the psychiatrist on August 25 (exhibit "3"), identifies Moucharafieh's purpose for calling as an effort to consider the issues of Iris withdrawing the letter and going on leave; and in several ways he asked the witness to reconsider his non-recollection or denial of Moucharafieh posing those two issues. Partly because of the failure of commission counsel to pose adequate questions and because of Colburn's reluctance to squarely respond in this area, the record is not without confusion. Predicated, however, on the following discourse it appears that the principal at least admits the issue of Iris's purported resignation was raised in some fashion by Moucharafieh as a reason for and a topic covered in that call:

"Q....Do you remember [Moucharafieh] raising concerns about Kaufman's resignation to you in this telephone conversation... on the 25th?

"A. Yes.

"Q. You now remember she did raise concerns? Before you said it was not discussed.

"A. Ask me a specific...concern...

"Q. ...do you now recollect that the doctor was generally concerned about that resignation...?

"A. She, and if I did, if I implied that she didn't discuss that, I didn't mean to. She called and told me Iris had resigned.

"Q. Do you deny she raised serious doubts about mental capacity of her patient to do that act?

"A. No, I don't deny that she raised some doubts.

X X X

"Q. Well, she says she called and told you that the young lady was not fit to be making such a resignation and she wanted you to retract it. Or, her words this morning

were rescind...I don't know what the terminology might be, but she wanted to undo what Iris Kaufman had done, and you said, 'No, there was no such conversation.'

"A. No, I'm sorry if I said that or implied that, I did not mean to."

Later Tuesday, Kaufman phoned the principal at home and asserts she told him that (1) she wanted to withdraw her letter of that morning, and (2) requested a leave. She said Colburn expressed reservations but told her words to the effect "we'll see." The administrator denies that Iris requested withdraw of the proffer to resign or requested to go on leave. As with Moucharafieh, he contends that the educator requested not a leave but his opinion as to whether she might have a leave or if leave was appropriate and available. An undisputed log entry drafted by Colburn at the time of Kaufman's call (10:00 p.m.--8/25), sharply contradicts respondent's current statements as to what Iris said. Exhibit "11" reflects the original entry which, approximating almost exactly the teacher's words, states: "Iris called, 10:00 wanted a leave." Reserving for a moment when, subsequently the principal added, above the entry in a slanted posture with different pen, the words "opinion of", the entry now agreeing with current testimony--"Iris called, 10:00 wanted opinion of leave." The record reflects, that approximately a week before this hearing, Colburn told attorney Sayre (deposition) he added these words in October after Sayre had made formal demand on the Benton School District relating to Kaufman's job separation. At our hearing, respondent said his testimony to Sayre was erroneous, the words being added above the entry on August 27, 1981 in relation to the board meeting concerning Iris' contract.⁴ Exhibit "11" and related testimony reflects that on the next day (8/26) Colburn conferred with England and informed him of the calls from Iris and Moucharafieh. The principal said he could recall none of the details that were related to England.

Conceding that he initiated contacts with the superintendent to brief him about these calls, Colburn states he is unable to recall specifics related. He remembers recounting the "essence" of the psychiatrist's call, informing England yet that day that she raised an issue concerning Kaufman and a leave of absence. The second briefing is reflected in a log entry (exhibit "11") on August 26: "met Phil at 1:30...discussed Kaufman situation for 2 weeks." He denied any recollection

4. The dispute, if any, as to whether Dr. Moucharafieh and Kaufman requested of Colburn consideration of withdrawing the reputed resignation, is resolved by finding such request was made by each on August 25, 1982. It is further found, that both of these persons substantially conveyed to the principal that they were interested in exploring some kind of leave for the complainant as an alternative to job separation. These findings are amply supported by the direct evidence relating to the issue, including the relevant portions of the progress note (exhibit "3") which concededly was made contemporaneously with the doctor's examination and call to respondent. Moreover, Colburn himself does not dispute that the subject of leave was a consideration advanced by both complainant and her physician. Finally, (1) respondent's attempt to rely on notes prepared roughly eight months after the fact, during pendency of this hearing and litigation, as necessary to refresh his recollection of the transaction and, (2) the addition to the original August 25, 1982 log entry regarding leave and the conflict generated by Colburn as to when it was made, substantially affect the creditability of the principal's recall of the events embraced in the relevant phone conversations.

as to details of this England meeting, but in view of Kaufman's inquiry to him hours before it is not totally unreasonable to infer the "2 weeks" referred to a discussion of leave.

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Respondent England agrees he was informed of Moucharafieh's contact with Colburn, knew she was a doctor of psychiatry and called out of concern for Iris's condition. He said he was not specifically told that the doctor raised an issue regarding the proffer of resignation. While England concedes that Kaufman told him Thursday (8/27) that Moucharafieh wanted her to go on leave, we do not find in the record the extent, if any, of the principal's briefing of England concerning the doctor's position on leave of absence. The superintendent also acknowledged that Colburn informed him that Kaufman called the day of her proffer not "sure she wanted to go ahead with it" and "was thinking about changing her mind." England testified (deposition, p.52), that he did not personally share with his board this knowledge as to Iris' indecision.

August 27--Board Action--Subsequent Events:

Within approximately twenty hours after learning of Kaufman's indecisiveness about the job issue (Wednesday 1:30 p.m.--see Colburn's testimony and log entry), the superintendent caused a special board meeting to be arranged and expeditiously convened at 9:00 a.m., August 27, 1982 (see exhibit "7" and testimony of Elmer Miller). Roughly an hour prior to this meeting, respondent England called Cedar Rapids and informed complainant of the board meeting. A portion of that conversation as related by respondent is reproduced in the margin.⁵

Approximately one hour later (or, at any rate, before the board action), England checked with the administrative offices to ascertain if Kaufman might have called. Shortly subsequent to that call and upon the superintendent's recommendation,

5. Q. "...she said, one of my doctors -- or my doctor suggested that I should have a leave. What do you think, she asked me. I recall my response was, well, how long? This is a possibility, Iris. How long might the leave be for? ... let me explain why I'm asking you this. This might have something to do with who we get for a substitute. I told her that if it's a short period of time, we would probably not get someone who was certified. ...And I think she responded something to the effect, yes, I understand your situation or the circumstances that you might be in with this. And then she said, well, what if I get feeling better after a few months? If I get feeling better, would I have my job back? And I told her that, well, if she wasn't on leave that we would probably by that time, depending on how long it would be, already have a replacement....Then she asked me, what about recall? [Witness explains recall inapplicable]...

She said the, well, what if a position opened up within my category, meaning I assume her resource category, teaching category. And I said, then you could then be considered for employment in that position....I did mention to her after I asked how long her leave might be and she didn't know how long it would be, that-- I said, well, we have some program considerations to think about. We needed to know whether we should get a long-term substitute or just someone to fill in. Because I said we wanted to develop some type of continuity in the program. And Iris responded something to the effect, I'm sure I can understand your position and she went on to say, I'm really sorry about this problem. I was just wondering what you thought...."

The board acted unanimously in giving its consent to a mutual termination of Kaufman's teaching agreement as an effort to satisfy the requirements of Section 279.13 of the Code.

Respecting this board meeting, the record indicates that Colburn briefed the board "generally" about the problems of the proceeding days. The record also indicates, however, that crucial allegations were not specifically or generally brought to the board's attention. Thus, for example, England concedes that he did not personally note for the board the following: a) Kaufman's interaction with psychiatrist past days, b) Kaufman's vacillation and indecisiveness on resignation issue, c) Kaufman's known depressive illness and the recent remarkable deportment (visible spells of being upset and crying related by Colburn), and d) the two calls made shortly following proffer of resignation from Moucharafieh and Kaufman, both raising concerns respecting the proffer. These assertions are supported by the board member, Elmer Miller, testifying at the hearing. He had a general awareness, for example, that mentioned telephone conversations were related to the board but did not recollect that the mentioned specifics were covered. Thus, he had no recollection of Colburn's telling the board that when Dr. Moucharafieh called she expressed concern about Kaufman's condition to engage in such transactions. He also stated that he had no recollection of the principal telling the board that Kaufman had called the night of her proffer, stating that she didn't want to go through with it.

Subsequent to complainant's discharge from University Hospital, her counsel made formal demand (seemingly for reinstatement) on the Benton School District. Such resulted in some kind of proceeding before the board, at which attorney Sayre appeared and prior to which Sayre furnished to the board and to the administration the medical records and data mentioned and reviewed above. The only thing reflected of record here is the lack of any formal disposition of that demand. The superintendent's deposition indicates that relating to the demand he had opportunity to and did become familiar with the mentioned medical records and data. While this concludes the statement of facts, other facts may be dealt with in the discussion and argument below.

Findings of Fact

1. The commission finds that the facts stated in division I (background) and division II (medical) of the statement of facts, accurately describe all things narrated and by this reference are incorporated as finding number 1.

2. It is further found that on August 20, 1981, when Iris Kaufman reported for service under her contract, she was afflicted with mental illness in the form of major depression. The disorder was and is chronic and cyclical and at least from August 19, 1981 and for the ensuing weeks complainant cycled through an acute phase of the depression.

3. It is also found that on the first day of school, respondent Colburn knew and had known for a year that Kaufman suffered mental illness, received psychiatric care and was on psychotropic drugs. On August 21, 1982 when Colburn found complainant upset, crying and talking resignation, for the first and last time he expended efforts to discourage such action and because he was sufficiently alarmed by her condition he requested the school nurse to go with her to the mental health clinic.

4. It is additionally found that on August 24, 1981 when Kaufman failed to report to school, Colburn called to ascertain the teacher's decision on course of direction, at which time Kaufman mentioned resignation. Respondent explored no possible options but requested a letter that day. Approximately an hour later, Kaufman called Colburn and told him she had been a baby and would not resign.

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5. It is further found that despite the assertion not to resign and respondents' claim of a rational teacher knowing her direction, Colburn arranged a 9:00 a.m. conference for August 25, 1981 so England could get involved and find out what was happening. At this point, England had been briefed about Friday's (8/21) episode and trip to the mental health center and he also knew about the two Kaufman-Colburn calls the day before.

6. At the conference, complainant shared her depressed mood and perceived inability to cope; and to England's comment of how the issue is to be resolved, she said I should resign, whereupon England departed. A letter was furnished Colburn and the latter, again having found the teacher upset and crying, for the second time out of concern directed the school nurse to go with her to the clinic. Prior to Kaufman's proffer, the administrators noted such decision was serious but neither suggested or explored any options, including the possibility of resort to some four weeks of mandatory sick leave.

7. We also find that on the day of the proffer, Dr. Moucharafieh (roughly late morning) and Kaufman (10:00 p.m.) each called Colburn and requested the proffer be revoked and the subject of a leave of absence be considered. Dr. Moucharafieh also advised Colburn that Kaufman was very ill and her state of mind was sufficiently impaired by the disorder that she had no business engaging in such transactions. The record reflects without much detail, that subsequently, but prior to the board action on August 27, 1982, England was briefed by Colburn of the "essence" of Kaufman's and Moucharafieh's post-proffer calls.

8. We additionally find that within hours of the proffer and its requested withdrawal, respondents called a special board meeting for 9:00 a.m. the next day (8/27) solely to present and recommend board acceptance of the proffer.

9. That approximately an hour before the board met and voiced its consent to mutual discharge of the teaching agreement, England phoned complainant in Cedar Rapids to advise her of the meeting; that while Kaufman stated she would not attend, she did not expressly articulate a desire for affirmative board action but rather informed England that her doctor advised a leave of absence; and that the substance of the remaining conversation involved Kaufman exploring several issues as to how she might retain some nexus to the district upon improvement of her health. Subsequent to this call and just prior to board vote, England reflected further concern about the matter by delaying district action to inquire of school staff if the teacher had initiated efforts to contact Coburn or himself.

10. That immediately prior to board action, Colburn and England gave the board a general account of events of the preceding six days, though the evidence from the board reflects either no recollection or a denial that the board was given specifics as to Kaufman's mental illness and Moucharafieh's opinion thereupon; that Kaufman had vacillated back and forth on the issue; and that on

the very day of the proffer both Moucharafieh and complainant called the administration requesting revocation and consideration of leave.

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11. Within three days of board action consenting to termination, Kaufman was admitted to University Hospital acutely ill and psychotic. Subsequent to release on October 10, 1981, attorney Sayre, on her behalf in late October and early November, made demand on the district relevant to the board action, wherein the above medical and other matters were pressed upon the board and respondents.

Legal Conclusions

Relevant statutes and rules of decisions are adequately noted in the discussion following. Involved criteria of professional practice (Section 272A.6) are cited at the conclusion of the discussion.

Discussion

I

CONSIDERATIONS OF STATUTORY AND RELATED RULES OF CONTRACT LAW:

It is appropriate to note that the issue presented involves a question of professional accountability under the Practices Act (272A), and not a determination of contractual status resulting from the late August events. Not uncommonly, however, in resolving the Chapter 272A accountability issue it is necessary to consider applicable law relating to the alleged transactions, especially that law expressly germane to school operations (see e.g., Boyden Hull Schools vs. Baker, Case 81-5 (Nov., 1981); Mason City Schools vs. Kramer, Case 80-19 (Mar., 1981); Rule 640-3.1 (1) (a), Iowa Administrative Code, Professional Teaching [640]). Thus, in finding violations of our statute and criteria it is necessary to assess administrative actions affecting students (suspensions) and teachers (free speech interference) in light of an existing legal framework (see e.g., Kempe vs. Rockwell and Raisch, school administrators, Case 79-5 (Sept., 1980); Mar-Mac Educational Assn. vs. McIntosh, school principal, Case 81-4 (Dec., 1981)). In a recent case, involving professional liability of a teacher for nonperformance of a contract, we also felt it appropriate to construe the "mutual termination" clause of Section 279.13 of the Code, holding that despite express words by board to "accept resignation" facts showed no release (Boyden-Hull, supra, see also, Parkersburg Schools vs. Altman, Case 79-7 (Nov., 1979)). Finally, in considering the legal framework of teaching agreements, proffers and termination we note that, both in practice and by reasons of statutory assignment, school administrators are not alien to the process.

While the teaching agreement at issue was vested with an expectation of continued employment (Burton vs. Ames Schools, 291 N.W.2d 351 (Iowa-1980)), such could be revoked by mutual agreement under Code Section 279.13. Mutual agreement itself being a contract to discharge a prior contract (Simpson, Contracts, Section 205, pp. 414-415 (West Publishing Co. - 1965); Curttright vs. Center Junction Schools, 82 N.W. 444 (Iowa -1900)), the proffer to resign being an "offer," is subject to contract requirements of "mutuality," "capacity" and "revocation of offer." To be valid, all contracts, including one to discharge a prior contract, require mutual assent:

"It is fundamental in the law of mutual assent that the parties be in agreement both as to the same subject matter and at the same time. This requirement of concurrence as to terms and time is expressed in the cases as a requirement that the minds..must meet." Simpson, supra, Section 9, p. 9; cf. Raffles vs. Wichelhaus, 2 Hurl. & C.906 (1864).

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An offer may be revoked prior to its acceptance and effective revocation removes the requirement of mutual assent (Curttright vs. Center Junction Schools, 92 N.W. 444 (Iowa - 1900) (proffer to resign teaching position may be revoked at any time before acted upon); Restatement, Contracts, Section 42). Contract law does not require written revocation (Board of Control vs. Burgess, 206 N.W.2d 256 (Mich. App. - 1973); any clear manifestation of unwillingness will suffice (Restatement, Contracts, supra); and if the offeree learns from some third party of the unwillingness to contract, acceptance thereafter is ineffective to complete a contract (Emmons vs. Ingebretson, 279 F.Supp. 558 (N.D. Iowa - 1968) (telephone call to agent "to hold up" was express or implied revocation of consent); Curttright, supra; Simpson, Contracts, supra, Section 25, p:32). Mutual assent may also be totally absent or of such legal ineffectiveness as to permit avoidance of an agreement. Understood as a general statement, unsoundness of mind (usually labeled "insanity" in cases) before or at time of acceptance prevents a contract, at least where such is known. If insanity of offeror is not known to offeree at time of acceptance, most jurisdictions permit a contract which, however, is voidable by the infirm party.⁶

Predicated on our findings of fact and supporting statement of facts, a not insubstantial case can be made that Kaufman manifested, in one way or another, an unwillingness to proceed with the offer to resign. Moreover, the facts present a serious issue as to initial validity of that offer or its voidability at Kaufman's option, because of her undisputed mental illness. Since we understand these issues as appropriately for jury or court disposition, we are satisfied to note that serious contractual issues were in evidence during late August having relevance to "the expectation of continued employment" (Burton, supra) vested by Chapter 279. As noted in division II, respondents, acting in their school administrative role, either knew or should have known that Kaufman's proffer was seriously suspect, at least as to mutual assent from its inception continuing up to the receipt of England's actual recommendation to the board on August 27. Assuming arguendo such issue was not apparent the week of August 24, respondents surely gained knowledge of Kaufman's position as the result of her attorney's demand efforts in October and November of 1981.

6. Weber vs. Bottger, 154 N.W. 579 (Iowa - 1915) (agreement by incompetent may be repudiated by him or his representative); In Re Kappel's Guardianship, 47 N.W.2d 825 (Iowa-1951) cites with approval following language: "A person of unsound mind is one who is incapable of transacting the particular business in hand. He need not necessarily be an insane or distracted person, and may be capable of transacting some kinds of business, and yet be of unsound mind, and incapable of transacting business of magnitude, or of at least some degree of intricacy. He may be capable of understanding his rights as to some transactions and not others."; In Re Estate of Farris, 159 N.W.2d 417 (Iowa - 1968), citing 17 C.J.S., Contracts, Section 133(1) (a) that each party must be of sufficient mental capacity to appreciate the effect of what he is doing and be able to exercise his will with reference thereto. See also Restatement, Contracts, Section 12: "Capacity to Contract."

RESPONSIBILITY OF SCHOOL ADMINISTRATORS RESPECTING THE CONTRACTUAL EXPECTATION OF CONTINUED EMPLOYMENT BY A MENTALLY ILL TEACHER WHOSE RESIGNATION GESTURES ARE VACILLIATING, AMBIGUOUS AND SUSPECT AS TO CONTRACTUAL CAPACITY:

Factually, there is little dispute that during the relevant time Kaufman was cycling through a remarkable phase of the illness culminating in psychosis. Respondents contend, however, that when the teacher gave the proffer she appeared rational and seemed to know what she was doing. In other words, their position - is that it was merely a case of a teacher desiring a "mutual" discharge of her contract. This approach, however, ignores important facts:

a) Colburn knew of the illness and on Friday and at the time of the proffer was sufficiently concerned by Kaufman's condition that he involved the school nurse and mental health clinic. He noted at least some of these problems to England.

b) Kaufman's vacillation and indecisiveness on key issue was known to both respondents.

c) Moucharafieh's August 25 communication to Colburn of the presence of acute manifestations of the illness and the resulting impaired state of mind. Again, Colburn states essence of call passed on to England.

d) August 25 calls by Moucharafieh and Kaufman, each requesting withdrawal of proffer and consideration of leave. While respondents do not unequivocally acknowledge request to withdraw, both concede leave was a subject of the calls. Efforts toward leave, of course, imply a desire not to resign.

e) As to England, these facts should be noted: He firmly testified that, as his philosophy and policy, a teacher so desiring will be permitted to resign and that predicated on his experience he found it the best practice not to interject inquiries as to why, about one's health or whether alternatives to resigning ought to be explored. In this case, England, for some reason, deviated from this policy; joined his principal for a Kaufman conference to find out "what's going on"; and just prior to the special board meeting called complainant and before the board acted he caused a recess to ascertain if there was further Kaufman developments. A not unreasonable inference arises from these actions that England did not perceive this as a cut and dried transaction; that despite his testimony, he was far from certain that "she knew what she was doing"; and that he harbored concerns about where Kaufman was postured respecting the proffer and mutual assent.

f) Finally, following release from University Hospital Kaufman's demand provided respondents with full information as to her mental disorder and capacity in late August, the respondents concluding, however, that further action was not indicated.

While there is obviously no obligation of inquiry and caution in the ordinary mutual termination proceeding, the issue presented is whether some such professional duty arises when involved school officials know or should have known that the Section 279.13 proffer was made by one mentally disordered under circumstances reasonably generating doubts as to the teacher's contractual intent (i.e.,

required mutual assent) and mental capacity. We hold that to the extent an administrator is required by school law or practice to participate in the process (or acts gratuitously), Chapter 279, the Practices Act and our criteria impose an affirmative professional duty to exercise care and circumspection to the end that it be reasonably and fairly resolved that relinquishment of the vested expectation (Burton, supra) depends on clear unambiguous intent by one whose mental capacity raises no serious issue.

This responsibility is initially inherent in Chapter 279 itself. The law sanctions not just any discharge of a teacher's contract but only those the product of actual mutuality. Suppose an administrator is informed by a longtime, effective teacher of unremarkable deportment that she wants to resign because God had come to her and identified her principal as an agent of satan sworn to kill her? Sound administrative practice ought to suggest that despite articulation to avoid the teaching contract, recommending mutual termination may work a gross disservice to the contractual interest of the deranged educator and could precipitate board and school officials into troublesome legal proceedings. Since Chapter 279 allows only discharge by mutuality, the administrator is charged with the duty to be cautious that mutuality indeed exists, thereby avoiding the evils just noted. In our opinion, the Kaufman situation differs only in degree from the "God" hypothetical, the evidence strongly suggesting an active and acute pathology contaminating complainant's mind and confounding motivation until she also was fearful of school. Moreover, should one be prone to tag this description as rhetoric and exaggeration, recall that within hours of the board's contribution to "mutuality" Iris was psychotic and hearing voices.

This affirmative duty in suspect cases is amply supported by criteria of professional practices found in Chapters three and four of the Iowa Administrative Code, Professional Teaching. First and by way of analogy only, the vested interest in the practice of education cannot be affected consequent upon mental illness except as provided by Rule 640-4.13:

"Personal requirements. In assessing the mental or physical health of educators, no decision adverse to the educator shall be made by the commission except on the testimony of personnel competent to make such judgment by reason of training, licensure and experience in professions, a significant concern of which is the study, diagnosis and treatment of physical or mental health."

Secondly, our criteria expressly treat the subject of contractual elements and interests in a school context Rule 640-3.1 (1) (a)-(b):

"a. The commission recognizes the need for all members of the profession to be cognizant of the statutes of the state of Iowa which deal with contractual and other legal obligations. A violation of any of the school laws constitutes a violation of the criteria..."

"b. The commission recognizes its responsibility to investigate cases which involve contractual violations and obligations..."⁷

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This statutory obligation (Chapters 279 and 272A) to proceed with caution and make careful inquiry, does not require respondents or other administrators to become students of contract law. The warning signs and caution flags were so numerous here that, unless it was merely expedient to be done with an ill teacher, prudent administrative judgment would have stayed rush to the board for action accepting Kaufman's offer. As noted, respondents knew or should have known that Iris was mentally ill. Prior to and following her proffer, the administrators are aware that she expressly articulated as much intent not to resign as she did to resign; and her conversation an hour before board action hardly describes an educator whose sole purpose is to generate support for acceptance of her offer to be rid of Benton Schools: e.g., "if I get feeling better, would I have my job back," or "my doctor suggested I should have a leave (England's testimony). Moreover, the record sufficiently supports our finding that following the proffer both administrators received ample notice from the psychiatrist as to her concern about the resignation and Iris' impaired mental capacity. With regard to this notice and a subsequent one from Iris, it hardly rings with fairness or equitable treatment to draw nice distinctions as to "requests for leave" or "requests for my opinion for leave." Finally and of extreme importance, is our finding that on the day of proffer both Moucharafieh and Kaufman advised Colburn of the unwillingness to proceed with the offer, the doctor using "rescinding" and Kaufman speaking of "withdraw." Our finding, if sustained, raises a very serious issue as to whether these calls worked a legal revocation of the offer. If the issue is answered affirmatively, there was nothing upon which the board could act. In our opinion, the issue was sharply presented to respondents (not hidden) and they had an obligation to the district (Ch. 279) and to complainant (Ch. 272A) to use reasonable care to resolve it. By the way, if the unwillingness expressed on Tuesday by Iris and her doctor had such effect, nothing which Kaufman is made to say immediately before board action can be construed as a revival of the old or a new offer.

By this decision, we do not intend to say that respondents or the district were somehow obligated to keep an educator whose condition precluded effective teaching performance or rendered performance impossible, thereby frustrating contract purpose. Even if the purported mutual termination was ineffective because of offer revocation or mental incapacity and assuming contract benefits such as mandatory leave and insurance were accorded the teacher, other relevant statutory remedies were and are available to resolve the performance dilemma. In the context of this case, however, respondents' actions and inactions, given the facts known to them, were not those of reasonable careful and prudent school

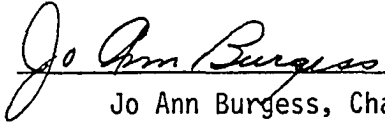
7. The following criteria are cited here without discussion in text. Rule 640-4.13 (1) provides each educator shall "be able to engage, except when temporarily disabled, in physical activity appropriate to the designated task. The term 'temporarily disabled' covers physical and mental conditions." Rule 640-3.3 (3) (b)--"shall accord just and equitable treatment to all members of the profession." Rule 640-4.5 (3) (b)--administrators shall "adhere to and enforce school law...." Rule 640-408 (6)--"consider the entire context of the statements of others when making judgments...." Rule 640-4.13 (8)--"competent educators maintain effective human interpersonal relation skills and...shall exercise discretion and reasonable judgment in the use of authority."

administrators. In our opinion, they failed⁴¹³ to accord just and equitable treatment to an acutely troubled district employee and must share responsibility for existing district problems, some of which they should have foreseen. At the very least, the rush to "mutual" termination should have been put on hold; Kaufman administratively placed on sick leave to which she was mandatorily entitled; and the various issues subjected to careful reflection, thereby providing a solution hopefully noninjurious to teacher or district. The respondents' contention that district needs required rapid action is simply not valid; no emergency existed and as this and other legal claims so graphically illustrate such rapid action rather than alleviating problems was productive of further strife.

Section 272A.6 Sanction

It appears that the problems generated by the mutual termination efforts result largely from errors of omission rather than through design. For this reason, all commission members are in accord that teaching certificate involvement is not warranted. Ideally, we would like to exercise collateral jurisdiction to cause respondents to reexamine the entire Kaufman matter de novo and to take appropriate action supported thereby. Such is, of course, not possible if for no other reason than the pending litigation. Accordingly, in keeping with Section 272A.6 of the Practices Act respondents acted unprofessionally toward Iris Kaufman, which actions and inactions also generated unnecessary issues for the district. To Del Colburn and Phillip England, you, and each of you, are hereby warned that in the future you should use more care and be more circumspect in relation to your professional and legal responsibilities toward professional staff and board. Specifically, you are warned to conform to the directions of this decision and generally to comply with the obligations imposed by our criteria of professional practices and applicable school law.

Dated May 20, 1982


Jo Ann Burgess, Chairman

APPENDIX S. IPTPC HEARING RECORD 81-17

BEFORE THE IOWA PROFESSIONAL PRACTICES COMMISSION

415

NORTH POLK EDUCATION
ASSOCIATION,

Complainant,

and

RICHARD SHOCKEY,

Respondent.

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CASE NO. 82-17

ORDER

The Commission finds that it has jurisdiction over the parties of the Complainant and the Respondent.

The Commission finds that is has subject matter jurisdiction over the subject matter of the Complaint.

The Commission has had submitted to it the Consent of the Respondent to the entry of this Order, which Consent was acknowledged by the Complainant and to which the Complainant does not object.

On the record which is now before this Commission:

IT IS HEREBY ORDERED, pursuant to Section 272A.6, Code of Iowa, (1981) that the Commission recommend and does hereby recommend that the Board of Examiners hold a certification revocation hearing on the Respondent's Teaching Certificate.

IT IS FURTHER ORDERED THAT the entire record now before the Commission, including the Complaint with the statements attached thereto, Answer and the Consent to this Order with Exhibits attached thereto, be forwarded with this Order to the Board of Examiners for their consideration consistent with the Respondent's Consent to this Order and the statement of additional reformation attached thereto and this Order.

Entered this 22 day of October, 1982.

THE IOWA PROFESSIONAL TEACHING
PRACTICES COMMISSION

Don R. Bennett

Don R. Bennett
Executive Officer & Legal Adviser
for the Commission

Exhibit "A" \

BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION

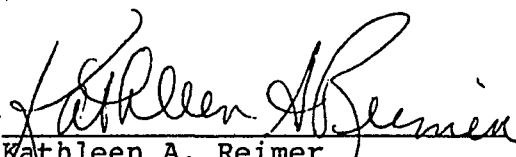
416

IN THE MATTER OF:)	CASE NO. 82-17	RECEIVED OCT 20 1982 IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION
RICHARD SHOCKEY	)	CONSENT TO
EDUCATOR	)	ENTRY OF ORDER
)		

COMES NOW Richard Shockey and by his attorneys consents to the entry of an order prior to hearing by the Commission pursuant to 272A.6 recommending the holding of a certification revocation hearing by the State Board of Examiners and certifying the record herein to the State Board of Examiners.

Respectfully submitted,

BLACK, REIMER & GOLDMAN

By 
Kathleen A. Reimer

By 
David H. Goldman

Suite 945, Carriers Building
601 Locust Street
Des Moines, Iowa 50309
Telephone (515) 282-9222

ATTORNEYS FOR
RICHARD SHOCKEY

BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION

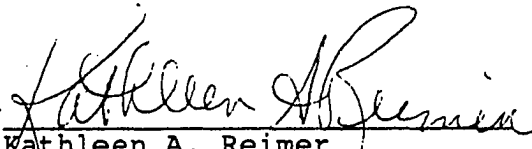
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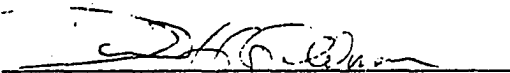
IN THE MATTER OF:)	CASE NO. 82-17
)	
RICHARD SHOCKEY)	CONSENT TO
EDUCATOR)	ENTRY OF ORDER

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By 
Kathleen A. Reimer

By 
David H. Goldman

Suite 945, Carriers Building
601 Locust Street
Des Moines, Iowa 50309
Telephone (515) 282-9222

ATTORNEYS FOR
RICHARD SHOCKEY

Roger D. Shafer, M. D.

General Psychiatry

418

Midwest Mental Health, P.C.

7025 Hickman Road

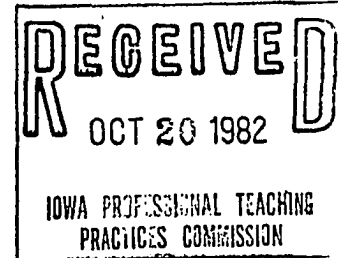
Suite 8

Des Moines, Iowa 50322

515/276-3533

September 15, 1982

Ms. Kathleen Reimer
Black, Reimer & Goldman
Suite 945 Carriers Building
Des Moines, Iowa 50309



Re: Richard Shockey

Dear Ms. Reimer:

Mr. Shockey was seen on September 14, 1982 for psychiatric evaluation. A psychiatric history was obtained of marital, family and work history.

The history would suggest that this gentleman over the last four years has been under increasing stress in his position as superintendent of the North Polk School District. The increasing stresses have led to the patient finding himself becoming increasingly hyperactive and feeling quite unhappy, with worry over finances and his general health, a sense of feeling inadequate also began to creep into this situation. Although he has appeared to be quite successful in his work setting, it began to create more and more pressure on him. With this background, this gentleman apparently then had a series of sexual encounters over a period of approximately two years with several different teachers. None of these encounters involved actual sexual intercourse but various levels of touching and foreplay.

The patient said that in his estimation the motives for this behavior had something to do with "wanting to self destruct." He said, "I would have been a hero if I had a heart attack," referring to his pressure in his work situation. He was aware of other motivations for this behavior the last few years that might include:

1. A wish to get caught.
2. An awareness of turning 45 and having lived 2/3 of his life.
3. An awareness that family members had previous vascular diseases and assuming that he soon would be sick.

Mr. Shockey is aware that his behavior was wrong, that it was not appropriate, that it broke one of his cardinal rules regarding any kind of such contact with others in the teaching profession. He feels quite remorseful and guilty about this at this point.

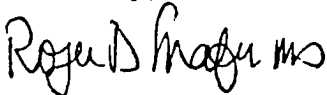
Mental status examination demonstrates a somewhat depressed gentleman who appears quite tearful at frequent times through the interview. Stream of thought is spontaneous and to the point. Thought content revolves around his concerns over this behavior and the outcome. There is no evidence of a

thought disorder. His affect is quite labile. His mood would be described as being mildly anxious, mildly depressed.

My impression suggests a gentleman suffering from gross stress reaction with probable burn out syndrome. People under this degree of stress in their work and personal life often have some breakdown in their normal functioning and some form of acting out so it appears that his acting out behavior has taken some sexual form. Based on the guilt he is feeling about this and his awareness of this it would appear that he would be able to regain control over his behavior.

I would recommend individual counseling, and the possibility of conjoint counseling in the future needs also to be a consideration. I believe that he could return in his work setting and be quite capable of resuming his work as superintendent or as a teacher. However, I believe a course of psychotherapy is quite important for him in an effort to resolve the ways he is approaching his life both in terms of his workaholic position, his wish to self destruct and his need to see the last third of his life being a very positive and growing experience. I believe the prognosis is quite good for this gentleman if he agrees to follow through with the counseling recommendations as stated above.

Sincerely,



Roger D. Shafer, M.D.

RDS:hp

APPENDIX T. CATALOG OF IPTPC HEARING RECORDS

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
1	Urbana	Trumpeter Superintendent	Reprimand Followup Investigation	Administrative Malpractice
9	West Marshall Community	Micheale Frease	Recommend Certificate Suspension 1 year (X)	Contract Dispute
12 (74-5)	Dubuque Community	Lonny Wilkinson	Recommend Certificate Suspension 1 year (X)	Contract Dispute
13 (74-4)		Benjamin O. Kernes	Recommend Certificate Suspension 1 year (X)	Contract Dispute
74-6	Allison Bristow	Dean W. Uhlenhopp Superintendent	Warning & Reprimand	Administrative Malpractice
74-10	Winterset Community	Warnke	Suspension of Iowa Certificate if Certified in Iowa or Reprimand	
74-11	Goldfield Community	A.F. Huisman Superintendent	Reprimand	Administrative Malpractice
74-12	Dallas Community	Faridi	Dismissal	
74-14	Weddingfeld		Dismissal	
74-15	Cochran		Dismissal	
74-16	Jesup Community	Dale Kies Teacher	Recommend Certificate Suspension 3 yr. (Upheld for Complain- ant's originally requested 2 year suspension/overruled IPTPC) (X)	Contract Dispute

421

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action.

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
75-1	Western Dubuque County	Paul Holt Teacher	Recommend Certificate Suspension 3 Years (X)	Contract Dispute
75-2	Nevada	Carol Edel Teacher	Reprimand	Contract Dispute
75-3	Garwin Community	Joseph S. Staebell Teacher	Recommend Certificate Suspension 4 Years (Upheld 2 year suspension) (X)	Contract Dispute
75-4	Garwin Community	Bill Hodges Superintendent	Dismissal	Administrative Malpractice
75-6	West Central Community	Robert Toutsch Teacher	Dismissal	Contract Dispute
75-7	Eagle Grove Community	Vickie (Thayer) Knudsen Teacher	Reprimand	Contract Dispute
75-8	Maple Valley	Robert Dreher Teacher	Recommend Certificate Suspension 30 June 1978 (X)	Contract Dispute
76-4	Osage Community	Charles A. Meier Teacher	Reprimand	Contract Dispute
76-5	Shellsburg Community	Harvey Chauvin Superintendent	Reprimand	Administrative Malpractice
76-6	Solon Community	Kathryne H. Bassett Teacher	Dismissal	Contract Dispute
76-7 & 76-12	Titonka Community	Allyn L. Boelman Raymond Gaul	Dismissal With Dispute Resolved on Local Level for Both Cases	

422

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action.

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
76-8	AEA 11	Mrs. Kainlauri Teacher	Censure Without Hearing	
76-9	Grinnell-Newburg	Ms. Susan L. Kasimow Teacher	Recommend Certificate Suspension Until 30 June 1979 (X)	Contract Dispute
76-10	Harris-Lake Park Community	Dell C. Harmsen Teacher	Reprimand	Contract Dispute
76-11	Lewis Central Community	Michael D. Higdon	Recommend Certificate Suspension 30 June 1979 (X)	Contract Dispute
76-13		Edwards	Dismissal	
77-1	Waterloo Community	Mr. Lightbody Teacher	Reprimand	Contract Dispute
77-4	Ankeny Community	Robert Novak	Recommend Indefinite Suspension (X)	Sexual Offense
77-5	Ankeny Community	John Buck Teacher	Recommend Indefinite Suspension (X)	Sexual Offense
77-6	Malvern	Robert Chown Teacher	Dismissal Contingent on Grade Adjustment	Discipline
77-7	Westfield Community	William Rohlman Teacher	Dismissal With Censure	Misappropriation of Funds
77-8	Northwood-Kensett Community	Snyder Teacher	Recommend Certificate Suspension 2 Year (X)	Contract Dispute
77-9	Dallas Community	William Yost Teacher	Dismissal With Censure	Contract Dispute

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(X) Signifies Board of Educational Examiners Concurrence with Recommended Action.

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
77-10	Tripoli Community	Leon Kirchoff Teacher	Dismissal With Censure	Student Discipline
77-11	Maquoketa Community	Kent Swinson Teacher	Recommend Certificate Suspension Until 30 June 1980 (X)	Contract Dispute
77-12	Lewis Central Community	Francis Shafer Teacher	Recommend Certificate Suspension 1 Year (Dismissed by Board of Educational Examiners.)	Contract Dispute
77-13	St. Augustin School	Daria Chong Teacher	Dismissal	Contract Dispute
77-14	SEMCO Schools	Gary Johnson Teacher	Dismissal	Contract Dispute
77-15	Schleswig Community	Robert Koch Teacher	Recommend Certificate Suspension 30 June 1983 (X)	Contract Dispute
77-16	Lewis Central Community	Sally Payne Teacher	Reprimand	Contract Dispute
77-18	Saydel Consolidated	Richard Dunshee Teacher	Recommend Certificate Suspension 3 Year (Two year suspension action taken.) (X)	Contract Dispute
77-19	Area I Vocational Technical School	Thomas Lindahl Teacher	Dismissal	Contract Dispute
77-20	North West Webster Community	Raymond Lassance Teacher	Dismissal	Contract Dispute
77-21	Jesup Community	Rex Silverson Teacher	Dismissal	Contract Dispute

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action.

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
78-1	North Polk Community	Ralph Stotts Teacher	Reprimand	Contract Dispute
78-4		Donald Parsons	Dismissal Without Prejudice	Sexual Acts
78-5	Albia	Mr. Mitchell	Dismissal With Prejudice	Administrative Malpractice
78-6	Calmar Area I	Parman and Schrage	Dismissal	
78-7	Calmar Area I	Phil Parman	Dismissal	
78-8	Plainfield Community	David Lau Superintendent	Reprimand	Administrative Malpractice
78-9	Le Mars Community	Ann Cady Teacher	Censure Without Hearing	Contract Dispute
78-11	Plainfield Community	Dennis Ingram Teacher	Dismissal	Contract Dispute
78-12	Iowa Valley Community College	Arnold Curry Teacher	Recommend Certificate Suspension 30 June 1980 (X)	Contract Dispute
78-13	Davis County Community	Tim Denham Teacher	Recommend Certificate Suspension 30 June 1979 (X)	Contract Dispute
78-15	Dike Community	Sandra Highnam Teacher	Recommend Certificate Suspension 30 June 1983 (X)	Contract Dispute
78-17	Newton Community	Gary Phillips Teacher	Recommend Certificate Suspension 30 June 1983 (X)	Contract Dispute

425

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
78-18	Columbus Community	Lyndle Bitting Teacher	Recommend Certificate Suspension 30 June 1979 (X)	Contract Dispute
78-20	Lewis Central	Dale Parker Teacher	Recommend Certificate Suspension 30 June 1980 (X)	Contract Dispute
78-21	Earlham Community	Ro Anne Ory Teacher	Censure	Contract Dispute
78-22	Dubuque Community	Cynthia Vogt Teacher	Recommend Certificate Suspension 30 June 1983 (X)	Contract Dispute
78-23	Nevada	Delores Vasey Teacher	Dismissal	Contract Dispute
78-24	Saydel	Wayne Davenport Frank Nogel School Administrators	Dismissal	Contract Dispute
78-25	Muscatine Community	Lorraine Oberhardt Teacher	Recommend Certificate Suspension 30 June 1983 (X)	Contract Dispute
79-1	Urbandale	Dennis Yoshimura Teacher	Reprimand And Probation	Student Discipline
79-2	Colo Community	Kevin Krabbe Teacher	Reprimand	Contract Dispute
79-4	Treynor Community	Tim Inman Teacher	Reprimand	Contract Dispute
79-5	Van Meter	William Raisch Jack Rockwell School Administrators	Reprimand	Student Discipline

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
79-6	Cedar Falls Community	Richard Juel Teacher	Reprimand	Contract Dispute
79-7	Parkersburg Community	David Altman Teacher	Recommend Certificate Suspension 30 June 1981 (Overruled by Board of Educational Examiners lack of detriment to district.)	Contract Dispute
79-7	Norway Community	Delores Hallman Teacher	Reprimand	Contract Dispute
79-10	Iowa Valley	Ulm	Recommend Certificate Suspension 30 June 1981 (X)	
79-11	Hinton	Kudron Teacher	Recommend Certificate Suspension 30 June 1981 (X)	Contract Dispute
79-12	Oxford Junction	Bousselot (Goettsch)	Recommend Certificate Suspension 30 June 1981 (X)	Contract Dispute
79-14	Manson Community	Sandra Hansen Schroeder Teacher	Dismissal	Contract Dispute
79-15		Carlson	Dismissal	
79-16	Amana Community	Kathy Green Teacher	Dismissal	Contract Dispute
79-17	Tri Center Community	Maynard Shackelford Teacher	Dismissal	Contract Dispute
79-19	Plainfield Community	Schultz Teacher	Recommend Certificate Suspension	Contract Dispute

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
79-21	Ar-We-Va	Fred Blaskovitch Teacher	Reprimand	Contract Dispute
79-23	Anamosa	Paul Wignall Teacher	Recommend Certificate Suspension 30 June 1981 (X)	Contract Dispute
79-24	Oelwein Community	Reginald Sampson Teacher	Recommend Certificate Suspension 30 June 1981 (X)	Contract Dispute
79-25	Central Lee Schools	Ted Trunnelle Teacher	Dismissal	Contract Dispute
79-27	Fort Madison	Telfor Teacher	Reprimand	Contract Dispute
79-28	Fort Madison	Bazow Teacher	Reprimand	Contract Dispute
79-29	Urbana Community	Susan Wagner Teacher	Recommend Certificate Suspension 20 June 1981 (X)	Contract Dispute
79-30	AEA 9	Holuk	Dismissal	
79-32	Northwest Iowa Technical College	Frank Hase Teacher	Reprimand	Contract Dispute
79-33	Grant Wood AEA	Christine Pierce Teacher	Dismissal	Contract Dispute
79-34	Grant Wood AEA	Jane Benda Teacher	Reprimand	Contract Dispute
79-35	Perry Community	Marcia Montag Teacher	Dismissal	Contract Dispute
79-36	AEA 4	Joan Granoff Teacher	Recommend Certificate Suspension 30 June 1981 (X)	Contract Dispute

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
79-37	Colo Community	John Holtkamp Teacher	Recommend Certificate Suspension 30 June 1981 (X)	Contract Dispute
79-38	AEA 4	Melissa McEwen Teacher	Dismissal	Contract Dispute
79-40	Colfax Community	Thomas Patterson Teacher	Recommend Certificate Suspension 30 June 1981 (X)	Contract Dispute
79-41	Colfax Community	Michele Merrick Teacher	Reprimand	Contract Dispute
79-42	Indianola Community	Janis McDowell Teacher	Dismissal	Contract Dispute
79-43	Green Valley AEA	Kim Pickett Teacher	Dismissal	Contract Dispute
80-1	Dike Community	Roger Shogren Teacher	Suspension 30 June 1981	Contract Dispute
80-2	Newton Community	Boyd Knapp Teacher	Dismissal	Contract Dispute
80-3	New Hampton	Teacher	Reprimand	Contract Dispute
80-4	West Des Moines	Grabinsk	Dismissal	
80-5	New Hampton	Arlin Dempster Teacher	Reprimand	Contract Dispute
80-6	Plainfield Community	David Lau Superintendent	Dismissal	Administrative Malpractice
80-7	Indianola Community	Gary Schmidt Teacher	Suspension Feb. 1982 (30 June 1982) (X)	Contract Dispute

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
80-9	Eastern Allamakee	Bishop	Dismissal with Prejudice	
80-10	Wilton Community	Neil Henran Teacher	Dismissal	Contract Dispute
80-11		Stern	Dismissal Without Prejudice	
80-12	Humbolt	Delmar Cram Administrator	Warning	Administrative Malpractice
80-13	Lewis Central	Clarence Miles Administrator	Recommend Revocation (X)	Misappropriation of Funds
80-14	Des Moines	Marilyn Canfield Teacher	Dismissal	Student Discipline
80-15		Matlin (Unable to locate Respondent)		
80-16	Davis County	Janice King Teacher	Dismissal	Contract Dispute
80-17	Des Moines	Robert Aceto Administrator	Warning	Student Discipline
80-18		Leary	Dismissal (2 Year Old Case)	
80-19	Mason City	Donald Kramer Teacher	Reprimand	Contract Dispute
80-20	Lewis Central	Robert Hayes Teacher	Suspension 30 June 83 (X)	Contract Dispute

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
81-1	Muscatine	Fred Blaskovitch Teacher	Indefinite Suspension or Revocation (30 June 1984)	Professional Incompetance
81-2		Fairbarn	Dismissal	
81-3	New Hampton	Tubbs	Voluntary Surrender of Certificate	Sexual Acts
81-4	Mar-Mac	Craig McIntosh Administrator	Reprimand	Administrative Malpractice
81-5	Boyden-Hall	Alan Baker Teacher	Suspension 30 June 1983	Contract Dispute
81-7	Heartland AEA	Douglas Rudolph Carolyn Kruger Teachers	30 June 1983 Suspension (X)	Contract Dispute
81-8				
81-9	Waterloo	Cindy Finger Teacher	Reprimand	Contract Dispute
81-11	Muscatine (Blaskovitch)	Sensor	Dismissal	
81-14	Anamosa	Hawkins	Indefinite Suspension (X)	Sexual Acts
81-15	Amana	Reed	Suspension 30 June 1984 (X)	Contract Dispute
81-16	AEA 6	Jerry Swan Teacher	Suspension 30 June 1983 (X)	Contract Dispute
82-1	Dubuque	Howard Pigg Administrator	Dismissal	

431

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
82-2	Cedar Rapids	Mark Williams Teacher	Dismissal	
82-3	Cedar Rapids	Terry Hutchings Teacher	Dismissal	
82-4	Cedar Rapids	Keith Myers Teacher	Dismissal	
82-5		Ralph Farrar	Dismissal	
82-7	Benton Community	Phillip England Del Colburn Administrators	Warning & Sanction	Administration Malpractice
82-8		Roger Baskerville	Dismissal	
82-9	Muscatine (Blaskovitch)	Sturms	Dismissal	
82-10	Madrid	Ronald Bromert Administrator	Dismissal	Student Discipline
82-12	Waverly Shell-Rock	Richard Pollitt Teacher	Reprimand & Warning	Student Discipline
82-13	West Marshal	Claudia Boatwright	Dismissal	Contract Dispute
82-14	Benton Ommunity	Phillip England Admininstrator	Dismissal	
82-15	Galea Holstein	Huelzman	Dismissal	Contract Dispute
82-17	North Polk	Richard Shokey Administrator	Voluntary Surrender	Administrator Malpractice

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action

<u>Case #</u>	<u>School District</u>	<u>Respondent</u>	<u>Action</u>	<u>Case Type</u>
82-18		Kollmorgen	Dismissal	Student Discipline
82-19	Sigorney	Yohn	Indefinite Suspension	
82-20	Central Dallas	Vincent	Dismissal	
82-21	Cedar Rapids	Christenson	Dismissal	
82-22	Madrid	Ronald Bromert Administrator	Dismissal	

(X) Signifies Board of Educational Examiners Concurrence with Recommended Action