

## MEMORANDUM

TO: Members of the State Board of Education

FROM: Leslie S. Donley  
Assistant Attorney General

SUBJECT: *Consent Agenda Item for April Meeting*

DATE: March 22, 2011

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I have requested that this item be placed on the Consent Agenda for the April meeting due to the recent death of our hearing officer, John Boehm. Another NDE hearing officer, Rich Birch, has agreed to serve as hearing officer in the pending matter, Case No. 10-28, *Smith v. Commissioner*. General Counsel staff and I will be exploring our options for hearing officers going forward.

L.S.D.

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

Gregory Allen Smith  
1125 E. 8<sup>th</sup> Street  
York, NE 68467,

Petitioner,

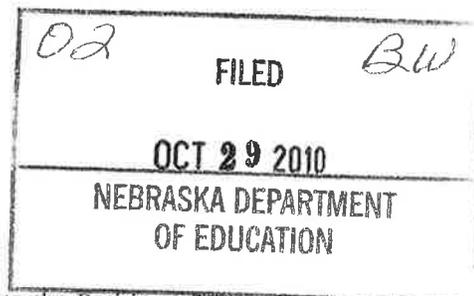
v.

Roger D. Breed, Ed.D.  
Commissioner of Education  
P.O. Box 94933  
Lincoln, NE 68509,

Respondent.

Case No. 10-28

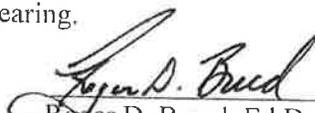
ANSWER



COMES NOW the Respondent, Roger D. Breed, and for his answer to the Petition of the  
Petitioner, admits, denies, and alleges as follows:

1. Admits paragraphs 1, 2, 3 and 6 of the Petition.
2. Denies paragraph 5 of the Petition.
3. Admits that on October 4, 2010, the Respondent, by letter, notified Petitioner of Respondent's decision to deny approval to participate in pre-student teaching activities. A copy of the letter is attached and marked as exhibit "A", and by this reference is incorporated herein.

WHEREFORE, the Respondent requests that the State Board of Education appoint a hearing officer to hold a hearing on this matter, make a recommendation to the Board, and the Board take such action as may be warranted by the evidence at such hearing.

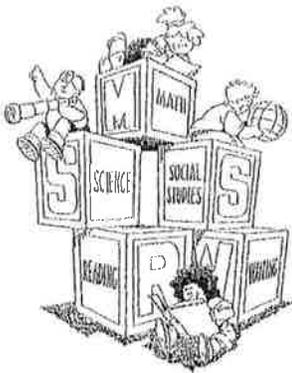
  
\_\_\_\_\_  
Roger D. Breed, Ed.D.  
Commissioner of Education

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Answer was mailed to the following person, through regular United States mail, postage prepaid, this 29<sup>th</sup> day of October 2010:

Gregory Smith  
1125 E. 8<sup>th</sup> Street  
York, NE 68467

  
\_\_\_\_\_  
Brian L. Halstead, #18077  
Attorney for Respondent



# NEBRASKA DEPARTMENT OF EDUCATION

Roger D. Breed, Ed.D., Commissioner

Scott Swisher, Ed.D., Deputy Commissioner

301 Centennial Mall South ■ P.O. Box 94987 ■ Lincoln, Nebraska 68509-4987  
Telephone (Voice/TDD): 402-471-2295 ■ Fax: 402-471-0117 ■ www.education.ne.gov

## CERTIFIED MAIL

October 4, 2010

Mr. Gregory Smith  
1125 E. 8<sup>th</sup> Street  
York, NE 68467

Re: Request for Approval to Participate

Dear Mr. Smith:

I have received your Request for Approval to Participate in Pre-Student Teaching Field, Laboratory, and Classroom Experiences or Student Teach.

In reviewing the information, I have decided to deny your request based on the following determinations: 1) On or about May 23, 2005, you were charged in the Ellis County District Court, Kansas, with Rape, a felony; 2) On or about August 28, 2006, pursuant to a plea agreement, an Amended Complaint was filed charging you with three counts of Battery, a misdemeanor; 3) On or about August 28, 2006, you were sentenced to five (5) years of probation; and 4) You were released from probation one month ago.

You may appeal my decision within twenty (20) days after receipt of this letter by filing a petition with the State Board of Education using the procedures set forth in 92 Nebraska Administrative Code, Chapter 21, Section 009.03, and Title 92, *Nebraska Administrative Code*, Chapter 61. Copies of these rules are enclosed.

If you have any questions, please feel free to contact Brian Halstead, General Counsel, at 402-471-0732.

Sincerely,

Roger D. Breed, Ed.D.  
Commissioner of Education

Enclosures

xc: York College



State Board of Education

Kandy Imes  
President  
District 7  
1850 20th Street  
Gering, NE 69341

Jim Scheer  
Vice President  
04.05.11 State Board of Education  
P.O. Box 16  
Norfolk, NE 68702

Robert Evnen  
District 1  
1000 11th Street  
Suite 500  
Lincoln, NE 68508

Mark Quandahl  
District 2  
4885 South 118th St.  
Suite 100  
Omaha, NE 68137

Rebecca Valdez  
District 4  
3922 South 23rd Street  
Omaha, NE 68107

Patricia H. Timm  
District 5  
1020 North 21st Street  
Beatrice, NE 68310

Fred Meyer  
District 6  
1580 Highway 281  
St. Paul, NE 68873

Joe Higgins  
District 8  
8423  
5067 South 107th Street  
Omaha, NE 68127

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

Gregory Allen Smith )  
(Name) )  
1125 E. 8th St. )  
(Address) )  
York, NE 68467 )  
(City, State, and Zip Code) )

Case No. 10-28  
(Leave Blank)

Petitioner, )

vs. )

Roger D. Breed, Ed.D.  
Commissioner of Education  
P.O. Box 94933  
Lincoln, NE 68509, )

Respondent. )

PETITION FOR APPROVAL TO  
PARTICIPATE IN PRE-STUDENT  
TEACHING FIELD, LABORATORY,  
AND CLASSROOM EXPERIENCES  
OR STUDENT TEACH

The Petitioner, in accordance with Title 92, Chapter 61, of the *Nebraska Administrative Code*, states and alleges as follows:

1. The Petitioner is Gregory Allen Smith 1125 E. 8th St  
(Name) (Address)  
York, NE 68467 (785) 243-6789 09/03/1982 50-96-3624  
(City, State, Zip Code) (Telephone Number) (Date of Birth) (Social Security Number)

2. The Petitioner is currently enrolled at York College  
(Name & Address of University or College)  
1125 E. 8th St. York, NE 68467  
(Current status and anticipated date of participation in pre-student teaching activities)

3. The following is a list of all convictions:

a. Criminal Charge: 3 counts of battery (KS 21-3412)-Misdemeanors

Disposition: 5 yrs probation, including 40 days in jail

Date: Sept. 18, 2006

Name and address of court: Ellis County District Courthouse  
1204 Fort St.  
Hays, KS 67601

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OF EDUCATION  
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b. Criminal charge: \_\_\_\_\_  
Disposition: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name and address of court: \_\_\_\_\_

4. The Petitioner's request for approval to participate in pre-student teaching field, laboratory, and classroom experiences, or student teach was denied by the Respondent on

October 4, 2010  
(Date on letter from Commissioner).

5. Other relevant data: See Attached #1 + #2

6. Title 92, *Nebraska Administrative Code*, Chapter 20, Section 005.07B states: "A person with a conviction as defined in Section 005.07A shall not be allowed to participate in pre-student teaching field, laboratory, and classroom experiences or student teach, without approval by the Commissioner or the Board. A person with a conviction as defined in Section 005.07A may request approval by the Commissioner or the Board by using the procedures set forth in 92 NAC 21 Sections 009.02 through 009.04."

WHEREFORE, Petitioner requests that the State Board of Education approve that the Petitioner be allowed to participate as provided under Title 92, Chapter 20, of the *Nebraska Administrative Code*. Petitioner grants permission for the Nebraska Department of Education to obtain and review all criminal records maintained by any law enforcement agency regarding the Petitioner.

Dated this 18<sup>th</sup> day of October, 2010.

Areg Smith  
Signature of Petitioner

VERIFICATION

STATE OF NEBRASKA     )  
  ) SS  
COUNTY OF York     )

I, Greg Smith, being first duly sworn under oath, state that I have read the contents of the petition and that to the best of my knowledge, information, and belief such contents are true and there is reasonable cause for filing said petition.

Greg Smith  
Signature of Petitioner

Subscribed and sworn before me this 19<sup>th</sup> day of October, 2010, by

Greg Smith  
(Petitioner)

Erin E. Sams  
Notary Public



**Exhibit #1**  
**Other Relevant Data: Greg Smith**

**Academic Accomplishments/ Activities:**

- Graduated from York College in December 2007 with a Bachelor's Degree in General Studies, Magna Cum Laude (3.76 gpa)
  - Member of Alpha Chi Epsilon Social Club
  - Honored as York College Homecoming King (Fall 2007)

Hope to complete requirements for Teacher Certification:

- K-12 Physical Education
- 7-12 History
- Endorsement in Coaching

**Professional Responsibilities:**

- Associate Head Wrestling Coach/ Recruiter (April 2010 – present)
- Thomas Hall North Men's Residence Director (August 2010 – present)
  - Sophomore/ Junior Male Residents
  - Oversee & Assist three Residence Assistants
  
- April 22, 2010: Awarded the York College Second Miler Award: For going the extra mile in service. Awarded by President Steve Eckman.
  
- Head Wrestling Coach/ Recruiter - York College (Aug. 2007 - April 2010)
  - Coaching & Mentoring Student-Athletes
    - Academic, Athletic, & Personal lives
  - Responsible for Overall Program Management
    - Recruiting/ Retention
    - Budgeting/ fundraising
    - Planning & Promoting
  - Additional work asked by York College

**Additional Service & Mission Work:**

- Sponsor of Social Club on Campus: Alpha Chi Epsilon (2007 - present)
  - Supervise weekly meetings
  - Mentor diverse group of young men
  - Serve alongside them in various projects
  - Mission Trip Sponsor for York College's Social Club (Alpha Chi Epsilon)
    - Spring Break 2010: Service Work at Camp Eagle in Southwest Texas
    - Spring Break 2009: Hurricane Relief in High Island, Texas
  
- Service at Wisconsin Christian Youth Camp: Black River Falls, WI
  - Counselor/ Co-Teacher for Intermediate Session: 13-15 yrs old (2 Weeks) Summer of 2010
  - Counselor/ Co-Teacher for Intermediate Session: 13-15 yrs old (2 Weeks) Summer of 2009
  - Counselor for Intermediate Session: 13-15 yrs old (1 Week) Summer of 2008
  - Counselor for Intermediate Session: 13-15 yrs old (1 Week) Summer of 2007
  
- York High School Wrestling League – Summers of 2009 & 2010
  
- Provided financial support for individuals/ groups for stateside & overseas mission trips
  
- Supported York College & York Area Community in the following ways:
  - Participated in Yorkfest Parade (past 6 years)
  - Organized team Service Projects for many individuals in the community
    - Moved an assisted living facility's residents to their new location in town (Supervised & assisted wrestling team)
    - Numerous service projects on campus for various individuals/ organizations (Supervised & assisted wrestling team)

**Personal Life:**

- Married Jaelyn (Coehoorn) Smith Dec. 30, 2007
- Active Member of East Hill Church of Christ – York, NE
  - Co-sponsor w/ wife for summer teen group – Summer of 2009
  - Co- teacher w/ wife for Kindergarten class – Fall 2009 Quarter
- Faithfully adhered to all requirements of sentence:
  - Released from Probation: Sept. 9, 2010 (Ellis County)
    - Document enclosed - **Exhibit #2**
  - Served jail sentence (40 days); completed in July, 2007
  - Maintained positive relations & met requirements of Probation Officers in Kansas & Nebraska.

#2



IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

STATE OF KANSAS,

Plaintiff

vs.

No. 05CR-281

GREGORY ALLEN SMITH,

Defendant.

JOURNAL ENTRY OF RELEASE FROM PROBATION

NOW, on this 9th day of September, 2010, the above captioned matter comes on for hearing. The State appears by Thomas J. Drees, Ellis County Attorney. The defendant appears in person and by Shaf Holland, Russell attorney.

WHEREUPON, the Court reviews the papers and pleadings filed herein and finds that we are set for hearing on the defendant's request for probation modification to terminate the probation. The defendant was convicted of three counts of misdemeanor battery on August 28, 2006 and sentenced to five years of probation with the Court Service Office pursuant to the plea agreement filed by the parties.

WHEREUPON, the Court reviews the files and finds that the defendant has served all time required per the probation order, has paid all costs and fees in this matter per the court order. Furthermore, the probation officer is recommending early release. The victim in this case was given notice of said hearing. The State objects on behalf of the victim to early release. The State is not objecting to early release.

IT IS ADJUDGED, ORDERED AND DECREED that:

- 1. The Court hereby grants the defendant's request to terminate probation as successful.

IT IS SO ORDERED.



*Edward E. Bouker*  
HON. EDWARD E. BOUKER  
District Judge

SUBMITTED BY:

*[Signature]*

THOMAS J. DREES, #14176  
Ellis County Attorney  
1204 Fort  
Hays, KS 67601

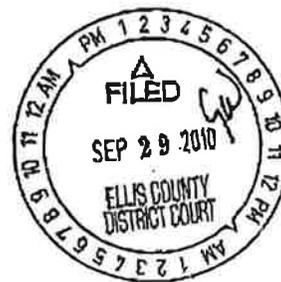
APPROVED BY:

*[Signature]*

MICHAEL "Shaf" HOLLAND  
Attorney for Defendant  
PO Box 206  
Russell, KS 67665

cc: Steve Lundy, CSO

IN THE DISTRICT COURT OF  
ELLIS COUNTY, KANSAS



STATE OF KANSAS, )  
 )  
 Plaintiff, )  
 )  
 VS. )  
 )  
 GREGORY ALLEN SMITH, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

No. 05 CR 281

ORDER TERMINATING PROBATION

Comes now on this 9th day of September, 2010, defendant's Motion for Early Termination of Probation. The State appears by Ellis County Attorney, Thomas J. Drees. The defendant appears in person and by his counsel, Michael S. Holland II of Holland and Holland, Russell, Kansas. Presiding is The Honorable Edward E. Bouker. There are no other appearances.

Thereupon, after argument of counsel the Court finds as follows:

1. Defendant was originally charged with offenses which were alleged to have occurred on May 4, 2004.
2. Ultimately, the defendant was convicted of three (3) counts of misdemeanor battery on August 28, 2006.
3. Defendant has fully complied with all terms and provisions of the probation instituted, including paying all fines, costs and restitution.
4. Additionally, the defendant has not violated any of the terms or provisions of his probation.

5. Therefore, because the alleged event occurred almost six (6) years ago, defendant has been on probation for a period of approximately four (4) years of his five (5) year probation, and the defendant has complied with all terms and provisions of his misdemeanor probation, the defendant respectfully requests that his probation be terminated at this time.

Thereupon, the Court finds that the defendant's Motion for Early Termination of Probation should be granted.

IT IS SO ORDERED.



*for* Edward E. Bouker - Judge of the District Court of Ellis County, Kansas

SUBMITTED AND APPROVED:

HOLLAND AND HOLLAND

Michael S. Holland II #18800  
Attorney at Law  
P. O. Box 206, 618 Main  
Russell, Kansas 67665-0206  
Phone 785-483-5332  
FAX 785-483-3847  
Attorney for Defendant

APPROVED:

ELLIS COUNTY ATTORNEY

Thomas J. Drees #14176  
1204 Fort Street  
Hays, Kansas 67601  
Phone 785-628-9405  
FAX 785-628-9409  
Attorney for Plaintiff

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