



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Gregory Allen Smith)
1125 E. 8th Street)
York, NE 68467)

Case No. 10-28

Petitioner,)

vs.)

Roger D. Breed, Ed.D.)
Commissioner of Education)
P.O. Box 94933)
Lincoln, NE 68509-4933,)

**HEARING OFFICER'S PROPOSED
FINDINGS OF FACT,
RECOMMENDED CONCLUSIONS
OF LAW AND RECOMMENDED
DECISION**

Respondent.)

Petitioner, Gregory A. Smith, filed a Petition with the State Board of Education, pursuant to the provisions of Title 92, Chapters 20, 21, and 61, Nebraska Administrative Code (NAC), requesting approval to participate in pre-student teaching field, laboratory, and classroom experiences, or student teach in schools in Nebraska. An answer was filed by the Respondent, Roger D. Breed, Commissioner of Education, who had previously denied this request.

A hearing was held on June 20, 2011, before Richard A. Birch, Hearing Officer, appointed by the State Board of Education pursuant to Title 92, Chapter 61, Nebraska Administrative Code. Notice of the hearing was provided to the parties. The hearing commenced at 9:00 a.m. in Conference Room A, Nebraska Department of Education, Sixth Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Petitioner appeared and presented sworn testimony on his own behalf. Petitioner also presented two witnesses, Robert DeHart and Kathleen Wheeler, who testified for the Petitioner. The Respondent, Commissioner of Education, was represented by Brian L. Halstead, Assistant Commissioner, General Counsel, Nebraska Department of Education, who cross-examined Petitioner and the witnesses. The parties jointly offered Exhibits 1 through 6, which were received without objection. The hearing was recorded

by General Reporting Service of Lincoln, Nebraska. A transcript of the hearing is attached.

Having considered the sworn testimony of the witnesses and the exhibits, the Hearing Officer makes the following proposed findings of fact, recommended conclusions of law, and recommended decision.

PROPOSED FINDINGS OF FACT

1. Petitioner filed with the Commissioner of Education a written request for approval to participate in prestudent teaching field, laboratory, and classroom experiences, or student teach.

2. On October 4, 2010, the Commissioner of Education denied the Petitioner's request, citing the following:

A. On or about May 23, 2005, the Petitioner was charged in Ellis County District Court, Kansas, with rape, a felony offense.

B. On or about August 28, 2006, pursuant to a plea agreement, an Amended Complaint was filed charging the Petitioner with three counts of battery, a misdemeanor under Kansas law.

C. On or about August 28, 2006, the Petitioner was sentenced to five years of probation.

D. The Petitioner was released from probation one month prior to filing his Petition.

3. Petitioner timely filed his Petition for approval with the State Board of Education on October 22, 2010.

4. This is the Petitioner's second request for approval to participate in prestudent teaching field, laboratory, and classroom experiences, or student teach. His first Petition was filed on October 17, 2006, and was NDE Case No. 06-22. On August 9, 2007, the State Board of Education approved a Final Order, adopting the Proposed Findings in Fact, Recommended Conclusions of Law, and Recommended Decision of the Hearing Officer and denied the Petition.

5. The facts relating to the incident in Kansas that formed the basis of the Petitioner's criminal conviction were set forth in the decision entered in NDE

Case No. 06-22. That decision was not appealed, its factual determinations are binding on the parties, and are therefore repeated herein.

6. Petitioner graduated from Concordia High School in 2001. Petitioner attended Labette Community College in Parsons, Kansas, after graduation from high school.

7. Petitioner was completing his course work at Labette Community College when on May 6 and 7, 2004, he visited Ft. Hays State University in Hays, Kansas, for the purpose of preregistering for fall courses. Petitioner had been offered a wrestling scholarship at Ft. Hays State, and was also to sign a letter of intent with the wrestling coach. He was staying with an acquaintance, Ryan Phillips, who was also a wrestler at Ft. Hays State, in a private residence occupied by several students that was known informally as the "wrestler house".

8. Petitioner was 21 at this time. He and Mr. Phillips went to a bar that evening where they consumed several pitchers of beer over a four hour period. There they met three women who were students at Ft. Hays, including the eventual "victim" in this matter. (The name of the female involved in this situation has had her name redacted from the record and therefore she will be referred to throughout as the "victim".) The victim, who was 20, apparently did not drink at the bar. She had previously had three or four shots that she consumed at her place of residence prior to going to the bar.

9. When the bar closed, the Petitioner, Mr. Phillips and the three girls went to the wrestler house. The time was approximately 1:00 a.m. on May 7th when they arrived. The group consumed more shots of liquor. The victim had approximately six shots in an hour. The victim was about 5'2" and weighed 105 pounds.

10. At some point, Petitioner and the victim went into Mr. Phillips' bedroom where they kissed and fondled for 15 or 20 minutes. Mr. Phillips returned to his room and asked the couple to leave. The other two women, one of whom was the victim's older sister, then left while the victim indicated she

wanted to stay. The Petitioner and the victim then went to a couch in the living room area where they engaged in sexual intercourse.

11. Mr. Phillips returned to the living room with a video camera while Petitioner and victim were engaged in sexual intercourse and began videotaping them. Petitioner was aware of Mr. Phillips' presence but did not stop his activity nor object in any way.

12. Mr. Phillips proceeded to videotape the two resulting in a videotape of some 32 minutes in length. There were hand signal communications between Petitioner and Mr. Phillips on the tape and at times the camera was stopped. During the taping, another male came into the room and observed the activity being videotaped. The videotape purports to show the victim at times in some degree of active participation, but also times when she appears to be asleep or passed out.

13. Finally, other people came into the room, and the Petitioner and victim ceased to engage in sexual activity. Petitioner went upstairs to shower and left the victim on the couch. At this point in time, a couple of other residents of the house took markers and pens and wrote on the victim while she was passed out on the couch. This activity was also videotaped. The victim was only partially clothed at the time.

14. After Petitioner showered, he then went to get a piece of pizza from the refrigerator. After that he returned to the living room area where the victim was still on the couch. Petitioner and victim again engaged in intercourse. No other parties were present at this time.

15. After finishing, Petitioner went upstairs and slept. Petitioner again left the victim lying on the couch in the living room.

16. Petitioner woke up at 9:00 a.m. and on his way out went past the living room. He observed the victim in the living room who appeared to be calling someone for a ride. Petitioner did not speak to her but smiled and gestured or waved. Petitioner then attended his pre-registration activities. Before leaving

Hays, Kansas, Petitioner obtained the videotape from Mr. Phillips and took it with him to his home in Concordia, Kansas.

17. The victim awoke on the morning of the 7th in the wrestler house at about 10:30 a.m. She was not fully dressed and her clothes were askew. Mr. Phillips was telling her to look at what they had written on her backside and several other males present told her various stories about what happened last night and were making fun of her. She did not remember anything after drinking two shots of liquor at the wrestler house earlier that morning. She felt physically uncomfortable and chafed and therefore went to the hospital where it was determined she had swelling and redness of her genitals as well as yellow and gold marker writing on her thigh, including the name "Aaron". The victim claims the sex was not consensual.

18. Later that day Petitioner and Mr. Phillips were attending a track meet which involved Petitioner's sister when they received a call from the coach at Ft. Hays State University directing them to return because of this incident. Word spread in the Ft. Hays University community that the activity may not have been considered consensual. At some point afterwards, the wrestling coach at Ft. Hays University told Petitioner that he would not be on the wrestling team.

19. The Petitioner turned the videotape over to his attorney, who eventually provided it to local law enforcement officials investigating the matter.

20. The tape was eventually reviewed by Timothy Scanlan, M.D., of Addiction Specialists of Kansas, Inc., at the request of the County Attorney. Based on his review of the videotape he concluded that the female participant was not fully conscious and an active participant in the activity, and much of the time she appeared to be asleep or nearly so. Her movements were generally reflexive and most appeared "non-purposeful". At times she was passed out. He further gave his opinion that the female victim may have suffered from an "alcoholic blackout" and did not appear to be functioning well enough to cognitively give informed consent.

21. The Petitioner also obtained an expert witness who reviewed the videotape, Paul W. Murphy, M.D., a psychiatrist from Wichita Psychiatric Consultants, LLC. He disagreed with Dr. Scanlan's conclusions and said that the victim's activity level varied considerably during an episode and there were several examples of purposeful activity rather than reflexive behavior. He did not observe any evidence of physical coercion and could find no evidence beyond a reasonable doubt that Petitioner could have known that the victim was not consenting. He could not establish a lack of consent on her behalf with any certainty. He further believed that under the Kansas statute, Petitioner could not be adjudged as having committed rape.

22. Petitioner was charged by the State of Kansas on May 23, 2005, with the felony offense of rape for "willfully and intentionally" engaging in sexual intercourse with a person "who did not consent to the sexual intercourse when the victim was incapable of giving consent because of the effect of an alcoholic liquor which condition was known by the offender, or was reasonably apparent to the offender".

23. On August 28, 2006, prior to the scheduled trial on the felony complaint, Petitioner pled no contest to an amended complaint of three counts of battery, a misdemeanor under Kansas law, Section 21-3412, for "unlawfully, willfully and intentionally causing physical contact to the person of another, in a rude, insulting or angry manner". This was part of a plea bargain agreement, and the charge of rape was dismissed.

24. On September 18, 2006, the Petitioner was sentenced to serve six months for each count, for a total of 18 months. The Petitioner was then placed on probation for a period of five years, and to serve 40 days in the county detention facility as a condition of probation. He was also directed to apologize to the victim. He did so in the courtroom. The victim subsequently wrote a letter to Petitioner in which she accepted his apology and also described the mental and emotional trauma that the incident had caused her.

25. Petitioner was given leave to serve the 40 day jail time in minimum 10 day increments. He was also assessed court costs and other fees. As of the date of this hearing, the Petitioner had served 20 of those days.

26. After finishing Labette Community College, Petitioner elected not to go to Ft. Hays State University and decided to attend York College in York, Nebraska.

27. Since the August 9, 2007, decision in NDE Case No 06-22 denying the Petitioner's request, the Petitioner has continued to live in York, Nebraska. On December 30, 2007, he married Jaclyn Coehoorn. He has been the head wrestling coach at York College. In April 2010 he stepped down as the head coach in order to pursue his teaching degree but remained as the associate head coach. The Petitioner has also been a member of the East Hill Church of Christ, where he has been active in youth oriented activities. He has also worked as a counselor at the Wisconsin Christian Youth Camp for the last five summers. In December of 2007, he graduated from York College with a Bachelor of Arts in general studies. In September 2010, the Petitioner completed the term of probation imposed upon him by the Kansas Court and was released from probation.

28. The Petitioner is currently employed at York College as the associate head wrestling coach and a residence hall director.

29. The Petitioner testified that he was aware of the effect his past decisions had on his ability to enter the classroom and was working diligently in trying to overcome those actions.

30. Robert DeHart testified for the Petitioner at the hearing. Mr. DeHart is a Professor of Education at York College. In 2005 and 2006 he had the Petitioner as a student in two education classes. After the Petitioner was hired as the head wrestling coach at York College he worked with the Petitioner in dealing with students. He stated that the Petitioner was very passionate about helping his wrestlers make the right decisions, and that the Petitioner has great care and concern for other people. Mr. DeHart also knows the Petitioner's wife and has

worked with her and the Petitioner at their church. Mr. DeHart considered the Petitioner to be a friend and stated that he has no concerns about the Petitioner being around his two young daughters, and that the Petitioner deserves a chance to teach.

31. Dr. Kathleen B. Wheeler is the Chair of the Education Department at York College, and testified for the Petitioner. She has taught the Petitioner in one class. She stated that the Petitioner was brash but kindhearted when he arrived at York College in 2004. She also stated that he had toned down since that time, but is still kindhearted, passionate, and sincere. She stated that she would trust the Petitioner in a classroom with students. Dr. Wheeler also stated that she was a part of the Petitioner's support system at York College when he was going through his "Kansas drama".

32. The Petitioner also submitted letters of recommendation from the following individuals:

A. Steve Eckman, the President of York College. He has known the Petitioner since January 2009. He believes the Petitioner is an upright person of character who has changed his life due to the influence of his wife and his conversion to Christianity. He believes the Petitioner has displayed exemplary personal character, integrity, and work ethic since he has known him, and states that Greg is held in esteem by his co-workers. He supports the Petitioner's appeal to pursue his goal of teaching.

B. Shane Mountjoy is the Vice President for Student Development and Dean of Students at York College. He has known the Petitioner since the Petitioner began attending York College in the fall of 2004, and since that time has seen a transformation in the Petitioner's life. He states the Petitioner has shifted from being self-centered, angry, and unhappy to serving, content, and joyful. He was involved with the Petitioner while the Petitioner was the head wrestling coach at York College and asked him to remain as an assistant coach when he stepped down from that position. He hired the Petitioner as the manager of a men's residence hall on campus, and feels he has been a good

role model for students. He has also been involved with the Petitioner at East Hill Church of Christ, where he says Greg is faithful in attendance and service. He also asked the Petitioner to take his 14-year-old daughter and one of her friends to camp in Wisconsin last summer and states he would not have done so had he felt there was any risk to his daughter.

C. Robert DeHart is a Professor of Education at York College. He has known the Petitioner for five years, had him as a student in class, and worked with him when he was the wrestling coach at York College. He believes the Petitioner has grown into a respected and loved individual and has become a leader on campus and a mentor to young athletes. He feels the Petitioner has worked very hard to change his life and that he deserves a chance to become a teacher.

D. Kathleen B. Wheeler is the Chair of the Education Department at York College. She has known the Petitioner since the fall of 2004. She believes that the Petitioner is now a mature, conscientious, and kind man who has taken his adversities to heart and has become a different kind of person than the one who arrived at York College in 2004. She believes that the Petitioner should be allowed to complete his teacher education program and be allowed to enroll in student teaching. She believes that the Petitioner would behave in a professional manner with all personnel involved in student teaching and would perform the tasks with adult maturity.

E. Jared A. Stark is the Athletic Director at York College. He has known the Petitioner for approximately five years. He believes the Petitioner is not the person he used to be and that he has learned from his mistakes. He has seen the Petitioner interact with students, peers, and his employers with "humility and Christian conviction". He believes the Petitioner works extremely hard and cares about other people. He believes the Petitioner has selflessly served the students and staff of York and has had a positive impact on hundreds of lives.

F. Ramon A. Diaz is the Head Wrestling Coach at York College. He believes the Petitioner has the good moral character and moral fitness

necessary for a teacher. He met the Petitioner in 2009 when the Petitioner was the head wrestling coach at York College and Mr. Diaz was a graduate assistant wrestling coach at Concordia University. He has met with the Petitioner for the last year and a half on an almost daily basis, become a good friend, and seen the Petitioner grow in all areas of his character.

G. David Lynn is the President of Sequoia Consulting Group, a consulting firm in Avon, Indiana. He also owns several ag-related businesses in the York area and is an elder at the Petitioner's church. He has known the Petitioner since 2006 and finds him to be an extraordinary young man. He believes the Petitioner has become a humble, honest, hard-working young man of good character and reputation, who has learned from his past mistakes. He supports the Petitioner's application to student teach.

H. Justin Mooney has served as the head teacher for a two-week summer camp at the Wisconsin Christian Youth Camp since 2005. He has worked with the Petitioner for the past two summers at the camp, where the Petitioner has volunteered his services as a staff member, counselor, and teacher. He states that the Petitioner's character and personality have been exceptionally beneficial and influential in the lives of their teenage campers. He believes the Petitioner possesses a unique ability to inspire, encourage, and lead people. He states that the Petitioner has had a significant influence on him.

RECOMMENDED CONCLUSIONS OF LAW

1. 92 NAC 20-005.07B provides that 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 of Education or the Board.
2. 92 NAC 20-005.07A(2) provides that:

For purposes of this Chapter, a misdemeanor conviction involving abuse, neglect, or sexual misconduct means an offense under the laws of any jurisdiction, which, if committed in Nebraska, would constitute one of the following misdemeanors (with the applicable sections of the Revised Statutes of Nebraska in parenthesis):

* * *

005.07A2a Assault (third degree) (28-310)

* * *

005.07A2h Sexual Assault (third degree) (28-320)

* * *

3. Kansas law, K.S.A. 21-3412(2) defines battery as “(1) intentionally or recklessly causing bodily harm to another person; or intentionally causing physical contact with another person when done in a rude, insulting or angry manner.”

4. Neb. Rev. Stat. § 28-310 provides that “(1) A person commits the offense of assault in the third degree if he: (a) Intentionally, knowingly, or recklessly causes bodily injury to another person....” Assault in the third degree is a Class I misdemeanor.

5. Neb. Rev. Stat. § 28-320 defines sexual assault, second or third degree as follows: “(1) Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree.” Sexual assault in the third degree “is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.”

6. The conduct for which Petitioner was convicted under Kansas law would be the equivalent of an offense in Nebraska under one or more of the above two Nebraska statutes.

7. A person with a conviction as defined in 92 NAC 20-005.07A may request approval by the Commissioner or the Board by using the procedures set forth in 92 NAC 21-009.02 through 009.04.

8. If the Commissioner denies a request to participate in pre-student teaching field, laboratory, and classroom experiences, or student teach, the applicant has 20 days following the receipt of that notice to appeal to the Board of Education.

9. The Board may overturn the Commissioner's decision, and direct the Commissioner to issue a certificate to the applicant, if "the Board finds that the requirements in this or related chapters have been improperly applied to the applicant or in the case of an applicant who the Commissioner has rejected due to criminal convictions, that the applicant has good moral character and possesses the moral fitness for teaching." 92 NAC 21-009.03

10. 92 NAC 21-009.04 sets out the guidelines to be used in determining whether or not an applicant has the requisite moral character and moral fitness to teach:

In considering whether to deny, not issue, or not renew a certificate of an applicant based upon criminal convictions, the Commissioner and Board shall take into account the following factors in determining moral character and moral fitness to teach:

009.04A The nature of the crime, the facts and circumstances surrounding the applicant's conviction including whether the conduct of the applicant would constitute a crime in Nebraska, the sentence received, and whether the sentence was commuted, set aside, or pardoned;

009.04B The applicant's age at the time of the conduct;

009.04C The recency of the conduct;

009.04D The applicant's positive social contributions since the conduct; and

009.04E The reliability of the information concerning the conduct.

11. Under certain circumstances, a conviction is not to be considered in determining whether to approve an application. 92 NAC 20-005.07A4 states: Convictions which have been set aside, nullified, expunged, or pardoned shall not be considered convictions for purposes of this Chapter, unless the laws of the jurisdiction of the conviction would allow the conviction to be used as the basis for denial of permission to teach or participate in pre-student teaching field, laboratory, and classroom experiences, or student teach, or for denial of a certificate to teach, counsel, supervise, administer, or provide special services in schools. However, such convictions shall be listed by the student as required in Section 005.07A.

RECOMMENDED DECISION

The Petitioner is properly before the Board for a determination of his request to participate in pre-student teaching field, laboratory, and classroom experiences, or student teach.

This is the Petitioner's second such request. His first request was filed in 2006, was denied by the Commissioner of Education, and was denied by the Board of Education. The final Order and the Hearing Officer's Proposed Findings of Fact, Recommended Conclusions of Law and Recommended Decision, NDE Case No. 06-22, were received into evidence in this matter as Exhibit 6.

NDE Case No. 06-22 was not appealed by either party. Therefore, legal conclusions and factual determinations made in that decision are binding on the parties in this case.

92 NAC 21-009.04 sets out the guidelines for determining whether the Petitioner has achieved the requisite moral character and moral fitness to teach.

One of the factors to be considered is the reliability of the information concerning the conduct. In this case, the information is very reliable, as much of the conduct was videotaped. The only dispute regarding the conduct is whether

or not the victim was capable of consenting. Had the case gone to trial, the victim's ability to consent would have been an issue at a number of different times during the incident and the State would only have needed to prevail on one of those times in order to obtain a conviction. The opinions of the experts are outlined above, and were presented at the hearing in NDE Case No. 06-22. Based upon the relative strengths of the opinions expressed by the experts, the Petitioner's attorney did an excellent job arranging the plea agreement that was entered into.

The conduct that formed the basis of the misdemeanor conviction occurred in May 2004. At that time the Petitioner was 21 years old. While it may not be unusual for 21 year olds to exercise poor judgment, particularly when alcohol is involved, it is also true that jails and penitentiaries are full of individuals who committed crimes when they were 21 years old. At 21 the Petitioner was an adult for all purposes under the law, and his age does not form a basis of any excuse, justification, or explanation of his conduct.

The decision in NDE Case No. 06-22 outlines the Petitioner's positive social contributions from the time he enrolled at York College through June of 2007. Those positive social contributions continued through the date of the hearing held in this matter in June of 2011.

The Petitioner has graduated from York College, married, served as the head wrestling coach and as the associate head wrestling coach at York College, and been the director of a residence hall. He has been actively involved in religious activities with York College and with his church. Many of those activities were youth oriented. He has served for several years as a summer counselor at a youth camp. He continues to have a number of recommendations from faculty and acquaintances who believe he would be an appropriate student teacher. It was, however, somewhat disconcerting to have one of his witnesses refer to the alleged rape as the "Kansas drama". While the phrase may have been an inadvertent slip, the use of it calls into question whether or not the person recognizes the serious nature of the charges in Kansas and the damage caused

the victim. Nonetheless, the positive aspects that supported the Petitioner's request to obtain permission to student teach in 2007 continue, and have grown stronger since that time.

Additionally, the Petitioner successfully completed his probation through the District Court of Ellis County, Kansas. On September 9, 2010, he received an early and satisfactory termination of his probation.

The problem with this case however, continues to revolve around the seriousness of the conduct engaged in by the Petitioner and the criminal convictions that resulted. In the previous case, the Hearing Officer determined that the Kansas conviction would fall within the definition of at least two of Nebraska statutes identified in 92 NAC 20-005.07A(2). These were third degree assault under Neb. Rev. Stat. § 28-310 and a third degree sexual assault under Neb. Rev. Stat. § 28-320. A conviction under Neb. Rev. Stat. § 328-320 would also require the Petitioner to register as a sex offender. Neb. Rev. Stat. § 29-4003.

While the plea was to a misdemeanor, the seriousness with which the situation was viewed in the District Court in Kansas can be readily determined by the fact that the plea agreement required the Petitioner to enter a plea to three misdemeanors, and the length of time he was placed on probation.

The September 9, 2010, Order terminating the Petitioner's probation was filed in Ellis County District County Court, Kansas, on September 29, 2010. The Petitioner's request to participate in student teaching was made to the Department of Education shortly thereafter, and the Commissioner's letter denying the request was dated October 4, 2010.

As of the time of the Petitioner's request, he had been off probation for less than one month. While the Petitioner has conducted himself in a positive manner since the decision in NDE Case No. 06-22, for almost the entire time since that decision he has been on probation. While on probation, the Kansas court certainly had leverage on the Petitioner to influence his positive behavior.

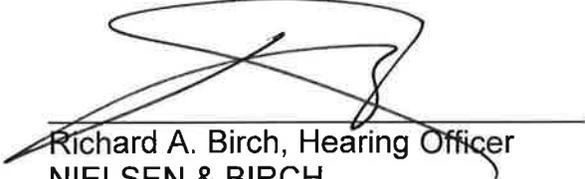
Whether that leverage was or was not necessary cannot be determined from the record, and likely can only be determined by the passage of time.

If this was a simple assault, the actions of the Petitioner since the incident would likely justify granting his request. Unfortunately, this was not a simple assault. The underlying allegations are extremely serious and the nature of those allegations cannot be overlooked. They had the potential to result in an extensive period of incarceration and the requirement that the Petitioner register as a sex offender. As the Hearing Officer pointed out in the prior case they also show an extreme lack of judgment, lack of common decency, and a callous disregard for the condition and wellbeing of the victim.

Under the Department of Education rules, one of the factors to be considered in evaluating the request of the Petitioner is whether or not the underlying criminal charge has been commuted, set aside, or pardoned. In this case, that has not occurred. If the conviction was to be set aside by the Kansas court, that would be a factor in determining whether or not to grant a future application. Such an Order from Kansas would be relevant even if under the laws of Kansas the conviction could still potentially be used as a basis for denial of permission to participate in student teaching. Because of the obvious risk to students if the Petitioner was to again engage in similar conduct, a psychological evaluation of the Petitioner might also be beneficial.

The Hearing Officer therefore finds based upon all the evidence in the record that Petitioner has not yet demonstrated that he possesses the requisite good moral character and moral fitness for teaching. The Hearing Officer therefore recommends that the State Board of Education uphold the decision of the Commissioner of Education and deny Petitioner's request to participate in pre-student teaching, field, laboratory, and classroom experiences, or student teach at this time.

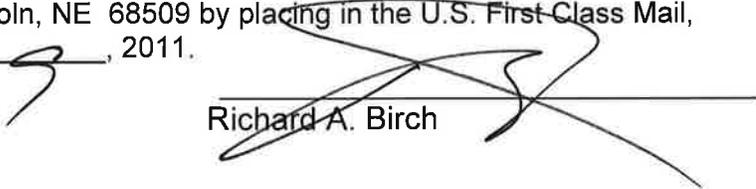
Dated this 9 day of August, 2011.



Richard A. Birch, Hearing Officer
NIELSEN & BIRCH
P.O. Box 1006
North Platte, NE 69103-1006
(308) 532-3150

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon Mr. Gregory Allen Smith, 1125 East 8th Street, York, NE 68467 and Mr. Brian L. Halstead, Attorney for Respondent, Nebraska Department of Education, 301 Centennial Mall South, Sixth Floor, Lincoln, NE 68509 by placing in the U.S. First Class Mail, postage prepaid, on August 9, 2011.



Richard A. Birch

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Gregory Allen Smith
1125 E. 8th Street
York, NE 68467

Petitioner,

vs.

Roger D. Breed, Ed.D.
Commissioner of Education
P.O. Box 94933
Lincoln, NE 68509-4933

Case No. 10-28

TRANSCRIPT

VOLUME I of I
(Pages 1 through 36)
EXHIBITS 1-6

Nebraska Department of Education
301 Centennial Mall South
Sixth Floor, Conference Room A
Lincoln, NE

Convened, pursuant to notice, at 9:00 a.m., on
June 20, 2011,

BEFORE:

RICHARD A. BIRCH, Hearing Officer.

A P P E A R A N C E S

Pro se: Gregory A. Smith
1125 E. 8th Street
York, NE 68467

For the Respondent: Brian L. Halstead, #18077
Assistant Commissioner/
General Counsel
301 Centennial Mall South
Sixth Floor
Lincoln, NE 68509

- - -

GENERAL REPORTING SERVICE (402) 477-8425

I N D E XWITNESSES:Direct Cross Redirect RecrossFOR THE PETITIONER:

Gregory A. Smith	11	14	--	--
Robert DeHart	25	28	31	32
Kathleen Wheeler				

- - -

EXHIBITS:Marked Offered Ruled On Found

1 Pleadings (15 pages)	4	8	8	Appendix
2 92 NAC 20 (26 pages)	4	8	8	Appendix
3 92 NAC 61 (23 pages)	4	8	8	Appendix
4 Other Relevant Data Regarding Petitioner (2 pages)	4	8	8	Appendix
5 Letters of Reference (12 pages)	4	8	8	Appendix
6 Final Order from Case No. 06-22 (18 pages)	4	8	8	Appendix

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Appearances				1
Reporter's Certificate				3
Opening Statement by Mr. Smith				9
Closing Argument by Mr. Smith				35
Closing Argument by Mr. Halstead				35

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REPORTER'S CERTIFICATE:

State of Nebraska)
) ss.
County of Lancaster)

I, WENDY C. CUTTING, reporter for GENERAL REPORTING SERVICE, and a Notary Public duly commissioned, qualified and acting under a general notarial commission within and for the State of Nebraska, certify that I reported the proceedings in this matter; that the witnesses in this proceeding personally appeared before me and were sworn by me to testify the truth, the whole truth and nothing but the truth; that the transcript of testimony is a true, accurate and complete extension of the recording made of those proceedings; that the transcript consists of:

Volume I -- Pages 1 through 36, and Exhibits 1 through 6; and further, that the disposition of said exhibits is referenced in the index hereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Lincoln, Nebraska, this 30th day of June, 2011.



Wendy C. Cutting

Notary Public

1 PROCEEDINGS:

2 (Exhibits 1 through 6 were marked for
3 identification.)

4 THE HEARING OFFICER: Let's go on the record. It
5 is June 20, 2011. It's about 9:00 a.m. in the morning.
6 This is a case before the State Board of Education, State
7 of Nebraska. The case is entitled Gregory Allen Smith
8 versus Roger D. Breed, Commissioner of Education. It is
9 Case No. 10-28, and I don't know if they have any special
10 designation that goes with this type of case or is that the
11 only number we have?

12 MR. HALSTEAD: It's the only number.

13 THE HEARING OFFICER: Okay. It's a Petition for
14 Approval to Participate in Pre-Student Teaching, Field,
15 Laboratory, and Classroom Experiences or Student Teach. My
16 name is Richard Birch. I am serving as the hearing officer
17 of this hearing. I was appointed -- I wasn't the first
18 person appointed. It was a Reassignment of Hearing Officer
19 by a pleading dated April 5th, 2011, after the previous
20 hearing officer, John Boehm, had to -- couldn't do it
21 anymore.

22 And so, it's an appeal pursuant to -- well, here's
23 what -- I'm probably the only one in here that's never done
24 one of these before, so if I get off track, don't hesitate
25 to point out that I'm off track and to keep me on the

1 straight and narrow. I'm not going to be offended by that
2 and would appreciate it by either side. So, as I understand
3 it, the Department of Education rules, 92 NAC, Chapter 20,
4 Rule 005.07B state that a person with a conviction can't
5 participate in those other activities without the approval
6 of the Commissioner; that the appeal procedure is provided
7 for by 92 NAC 21-009.02, when someone has been denied and is
8 in disagreement with that, and that's what brings us here
9 today.

10 And pursuant to another rule, and I think my
11 pre-hearing order, the hearing is conducted pursuant to
12 92 NAC 61-007 and that rule provides that each party is
13 entitled to an opening statement. We take evidence from the
14 petitioner. That evidence is subject to cross-examination
15 by Mr. Halstead when you presented your evidence. Then the
16 State has the opportunity to present their evidence. Their
17 witnesses, if any, are subject to cross-examination by you.
18 At the conclusion of the evidence, each side has an
19 opportunity to make a closing argument, if you want, you
20 can. And then it will be taken under advisement so I can
21 review the exhibits. And it's my understanding from looking
22 at the file that generally a transcript of the hearing is
23 prepared and I'll have the opportunity to review that. And
24 I think, Mr. Smith, a copy of that transcript is available
25 to you, but in this kind of hearing, I think you got to pay

1 for it if you want it. So, if you want one, you can have
2 one. Tell Mr. Halstead that you want one and off from
3 there.

4 Anyway, Mr. Smith appears pro se without --
5 Neither of these people are your attorney, I take it.

6 MR. SMITH: No, sir.

7 THE HEARING OFFICER: Okay, and then the State
8 appears through Brian Halstead as the attorney for the
9 Department of Education. The case is being reported by
10 General Reporting Service out of Lincoln, who I think has
11 done these in the past, so if you need to contact somebody,
12 that's who you need to contact if you need a copy of the
13 transcript, Mr. Smith, and I'm sure she'll give you a copy
14 of her card for you to use.

15 The rules of evidence are not applicable to this
16 hearing. Neither side has requested that the hearing be
17 conducted according to the rules of evidence, so it won't
18 be. It's conducted pursuant to a rule that says basically
19 I provide or give credence to those things that would
20 normally be accepted by people who are reasonable and
21 prudent, and I think that's at Rule 61-007.02. And so that
22 will be the standard for allowing in the evidence.

23 And I think that's kind of the preamble that I
24 have. Anything else we need to deal with at the start of
25 the hearing, Mr. Smith or Mr. Halstead?

1 MR. HALSTEAD: Your Honor, prior to the hearing
2 starting, I believe Mr. Smith and I have agreed on six
3 exhibits that would be offered and received in this case.

4 Exhibit No. 1, which would be the pleadings which
5 were filed in the case to this date.

6 Exhibit No. 2, which would be Title 92, Nebraska
7 Administrative Code, Chapter 20, the rules and regulations
8 regarding the approval of teacher education programs, which
9 include the prohibition language on pre-student teaching
10 with certain types of convictions.

11 Exhibit No. 3 being Title 92, Nebraska
12 Administrative Code, Chapter 61, the practice and procedure
13 rules for hearings and contested cases before the Department
14 of Education.

15 Exhibit No. 4, which is an outline of the
16 petitioner's regarding his life and activities in the case.

17 Exhibit No. 5, which is a compilation of numerous
18 letters of references written about the petitioner by
19 various employees and individuals with York College whom the
20 petitioner knows.

21 And Exhibit No. 6, which is a copy of the Final
22 Order in the State Board of Education Case No. 06-22,
23 Gregory A. Smith versus Douglas D. Christensen, Commissioner
24 of Education, the order having been entered on the 7th
25 day -- or excuse me, the 9th day of August, 2007. Those

1 would be the six exhibits, and I think we could jointly
2 offer those exhibits at this point in time and ask that you
3 receive them.

4 MR. SMITH: Yes, sir.

5 THE HEARING OFFICER: Okay, Exhibits 1, 2, 3, 4,
6 5, and 6 will be received.

7 (Exhibit 1 through 6 were received in evidence.
8 See Index.)

9 Exhibit 1 consists of the Petition and its
10 attachments. I'm going through Exhibit 1, because I think
11 it's going to get separated out probably back in the file.
12 I want to make sure the record shows exactly what it
13 contains and is so received. It's the Petition filed by Mr.
14 Smith on October 22nd, 2010, the Answer from the Department
15 of Education filed October 29th, 2010. The Assignment of
16 Case to Hearing Officer, dated December 8th, 2010. The
17 Reassignment of Case to Hearing Officer, dated April 5th,
18 2011. And the Notice of Hearing filed May 25th -- or has my
19 stamp on it of May 25th, 2011.

20 Okay, then, Mr. Smith, let's make sure that
21 Exhibit 5 contains all the letters that you wanted to have
22 in there. We have a June 15, 2011, letter from Steve
23 Eckman; a June 14, 2011, letter from Shane Mountjoy; an
24 undated letter addressed to Mr. Birch and State Board of
25 Education from Robert DeHart; a June 17, 2011, letter from

1 Kathleen B. Wheeler; an undated letter to the Nebraska State
2 Board of Education and Mr. Richard Birch from Jared A.
3 Stark; a June 19th, 2011, letter from Ramon A. Diaz;
4 someone's card.

5 MR. SMITH: That goes along with --

6 MR. HALSTEAD: It goes with the letter.

7 THE HEARING OFFICER: It goes along with the
8 letter, which is a May 17 (sic), 2011, letter from David
9 Lynn; and an undated letter to the Nebraska State Board of
10 Education and Mr. Richard Birch from Justin Mooney. Is that
11 all of them?

12 MR. SMITH: That is correct.

13 THE HEARING OFFICER: Okay, those are the letters
14 that are contained in Exhibit 5.

15 Any other preliminary matters we need to do before
16 we commence the argument and evidentiary portion of the
17 hearing?

18 MR. SMITH: No, sir.

19 MR. HALSTEAD: No, sir.

20 THE HEARING OFFICER: Okay, then, Mr. Smith, you
21 have an opportunity to make an opening statement.

22 MR. SMITH: I would just like to thank you for the
23 opportunity to come before you again to present my life
24 since the decision back in April 2007. I am grateful for
25 just the opportunity to hopefully demonstrate that I exhibit

1 or possess the moral and ethical character required by the
2 State Board of Nebraska for teaching certification.

3 THE HEARING OFFICER: Thank you.

4 Mr. Halstead, any opening?

5 MR. HALSTEAD: I'd waive an opening.

6 THE HEARING OFFICER: Evidence? Additional
7 evidence, Mr. Smith?

8 MR. SMITH: I brought along with me two members
9 of the York College Education Department to just speak or
10 answer any questions on my behalf, if there are any.

11 THE HEARING OFFICER: That's fine, if they
12 want --

13 MR. HALSTEAD: Did you wish to testify about what
14 you've done since 2007?

15 MR. SMITH: The list that I put in there, I could
16 testify to that. I could answer questions. You know, I
17 don't want to go about parading what I have been doing. I
18 think it's pretty self-explanatory.

19 DR. WHEELER: No, you need to, Greg. You need to
20 parade what you've been doing right now.

21 MR. SMITH: Okay.

22 THE HEARING OFFICER: Well, let's do this. Let me
23 have the court reporter swear you in.

24 MR. SMITH: Okay.

25 THE HEARING OFFICER: Would you raise your right

1 hand, please?

2 THE REPORTER: Do you solemnly swear or affirm the
3 testimony you're about to give will be the truth, the whole
4 truth, and nothing but the truth?

5 MR. SMITH: Yes, I do.

6 GREGORY A. SMITH

7 Called as a witness on his own behalf, having been
8 first duly sworn, testified as follows:

9 THE HEARING OFFICER: Would you just, for the
10 record, state your name and spell your last name for us,
11 please?

12 MR. SMITH: Gregory A. Smith, S-m-i-t-h.

13 THE HEARING OFFICER: Thank you. And, Mr. Smith,
14 what would you like to say or what statement would you like
15 to make?

16 DIRECT TESTIMONY

17 BY MR. SMITH:

18 I recognize full well the decisions of my past and
19 how that has affected my ability to enter the classroom. I
20 have also been very diligent in trying to overcome such
21 decision by maintaining the necessary changes, making the
22 necessary changes and abiding by the -- what's the word I'm
23 looking for? Abiding by the legal decisions and the
24 consequences that were placed on me on behalf of the three
25 misdemeanor convictions of battery that I have on my record

1 at this point.

2 THE HEARING OFFICER: Anything else you'd like to
3 say? Keep in mind I haven't had an opportunity to read
4 Exhibit 4. And what I'm going to do so that Exhibit 4 isn't
5 confusing, at the top of Exhibit 4, you've printed "Exhibit
6 1."

7 MR. SMITH: Yes, sir.

8 THE HEARING OFFICER: And so what I'm going to do
9 is I'm going to scratch that out and I'm going to put my
10 initials by it that I scratched out Exhibit 1, so there's no
11 confusion what's Exhibit 4 and what's -- I don't think there
12 would be, but now we're okay.

13 Anything else you'd like to say or statements
14 you'd like to make or facts you'd like to add to the record
15 at this point? And if you want to consult --

16 MR. SMITH: In the past four years since the April
17 2007 decision to deny my ability to enter the classroom, I
18 was hired as the head wrestling coach at York College in
19 August of 2007. During that year and the following two, I
20 led the wrestling program in terms of mentoring, coaching,
21 and advising the lives of young men from age 18 to 22. It
22 was an opportunity for me to be very real and open and
23 honest about the decisions that they make at that time.
24 That's something that I know full well and the importance
25 of.

1 I also, in April of 2010, I stepped down to
2 pursue -- to be mentored, to grow. I recognized that I led
3 the program to a point as far as I could with my age at that
4 point. And more importantly, I was coming to an end of my
5 legal conditions, probation, which I was hoping to begin
6 this process of appealing, which again, like I say, I am
7 grateful to be here.

8 I also have in here some information about my
9 personal life. I'm very active in our church in York,
10 Nebraska, East Hill Church of Christ. There are different
11 ministries that I've served on teaching the youth, which I
12 don't believe would be allowed if they thought there was
13 some challenges or character issues. And that's been a
14 blessing to me and my wife.

15 I've also served for the past five summers as a
16 counselor and co-teacher at Wisconsin Christian Youth Camp,
17 mentoring, sharing how God has been involved in changing my
18 life in allowing me to grow. And that's something I'm very
19 passionate about in building up the future generations of
20 characters and individuals.

21 Academically, I graduated in December of 2007,
22 with a Bachelor's in General Studies. I graduated magna cum
23 laude with a 3.76 GPA. I've been blessed to have many
24 people over the past four or five years to mentor me and
25 guide me into where I am today. So, that's in summation

1 what I would like to say.

2 THE HEARING OFFICER: Okay. Thank you.

3 Mr. Halstead, any questions for Mr. Smith?

4 CROSS-EXAMINATION

5 BY MR. HALSTEAD:

6 Q Mr. Smith, you indicated -- you're currently
7 living in York?

8 A Yes, sir.

9 Q You're married?

10 A I am, sir.

11 Q Have any children?

12 A No, sir.

13 Q And currently, you're employed how?

14 A Currently I am employed at York College as the
15 associate head wrestling coach, as well as the Thomas Hall
16 North residence director, which I oversee four residence
17 assistants, and mentor and discipline or whatever -- mentor,
18 guide, and oversee the hall for 40-plus young men,
19 sophomores.

20 Q And how long have you been doing the residence
21 hall supervision?

22 A This past year I took the job. I was offered the
23 job on August -- in August of this past year.

24 Q And that's continuing to this point today?

25 A Yes, sir.

1 Q And you're the associate wrestling coach?

2 A Yes, sir.

3 Q And you were the head wrestling coach for two
4 years at York College, right?

5 A For three.

6 Q Three years. Any other employment since 2007?

7 A No, sir, not that I'm aware -- I don't believe so.

8 Q You mentioned in your statement the end of
9 probation.

10 A Yes, sir.

11 Q And that would be the misdemeanor battery
12 convictions you have out of Kansas, correct?

13 A Yes, sir.

14 Q Did you satisfy all terms and conditions of your
15 probation?

16 A Yes, sir, I did.

17 Q Has the criminal court released you from your
18 probation?

19 A Yes, sir, September 9th, 2010, I was released, on
20 early release, actually.

21 Q Had any other contacts with law enforcement since
22 2007?

23 A No, sir.

24 Q No speeding tickets?

25 A Let me make sure. I want to be very clear here.

1 Not to my knowledge, but it is possible. I don't know. If
2 I have, I have faithfully paid for those. And I don't have
3 any other issues. I want to be honest.

4 Q Have you ever had to appear in a criminal court
5 besides for the battery assault convictions?

6 A No, sir.

7 Q Okay. I think your Exhibit No. 4 lists a number
8 of activities you've been involved in. Are there any others
9 besides what you listed here about your summer camp
10 mentoring and sponsoring that you've done?

11 DR. WHEELER: Shine Retreat?

12 MR. SMITH: Actually, we've always been on the
13 road competing that weekend.

14 A I can tell you that, you know, last week was Soul
15 Quest. There's a youth camp that comes in every summer.
16 Whatever opportunities there are to serve that are asked by
17 me, you know, I put the most -- I don't want to say most --

18 DR. WHEELER: Greg, they need specifics.

19 MR. SMITH: Okay.

20 A Soul Quest, for the past three years, I've helped
21 in different ways in terms of security on campus to make
22 sure that there's no people that are on campus that
23 shouldn't be, to protect the youth. Also, I have helped
24 bring mattresses over from Nebraska Youth Camp to make sure
25 that the campers have a great experience and are

1 comfortable. Those are areas that I've helped with the Soul
2 Quest Youth Camp.

3 Q (By Mr. Halstead) It sounds -- and this is from
4 my -- it sounds like a number of the activities you're
5 involved in are associated with York College or East Hill
6 Church of Christ. Would that be a fair statement?

7 A That would be a fair statement. I can also say
8 that Wisconsin Christian Youth Camp is one that I mentioned
9 that I have helped with for five years now.

10 Q And that's not affiliated with York College?

11 A No, sir, sorry.

12 Q That's all right. Any other community activities
13 or things you've done for others since 2007?

14 A Well, further, as director of the wrestling
15 program, you know, we provided different services on campus.
16 We moved TVs, heavy things were, you know, it's a blessing
17 to have a wrestling team. You know, we've really tried
18 to -- we've moved an elderly home in York. I can't remember
19 the name of it, I'm sorry, it was back in '08 -- to a new
20 facility that they built. We moved, I believe, eight to ten
21 different elderly people to a new location.

22 Q The convictions for battery --

23 A Yes, sir.

24 Q -- obviously, I think, in your previous hearing,
25 you related a lot of information about the whole incident

1 and the convictions.

2 A Yes.

3 Q As you sit here today, what would you express as
4 what you've learned from that situation and your criminal
5 conviction?

6 A Well, first of all, I can say that I -- I
7 understand how the decisions I make on a daily basis affect
8 my life as well as the other people around me. I can
9 honestly say that there are some things that I -- some
10 lifestyles that I have chosen to go away from, to flee from,
11 based on new personal convictions and what I hope to instill
12 in my own children as well as those who -- the youth or
13 whoever I come into contact with. I'm very passionate about
14 honestly being a man of God morally, ethically, character.
15 That's something that's very important to me. And that has
16 guided my -- the changes that -- since, I guess, April 2007
17 and May 2004.

18 Q Let's just presume hypothetically, that you get
19 approval to finish your pre-student teaching and student
20 teaching, and you get a certificate from the State to be a
21 teacher. The fact that you've got this public criminal
22 conviction, how would you address parents if they raised
23 concerns after finding out about the incident that led to
24 your criminal conviction?

25 A I think the most important thing I could say is I

1 would answer it honestly. I would answer it respectfully.
2 I would not try to hide, but I would not offer additional
3 information. I want to make sure that they know that I have
4 the best intentions for their youth. I recognize how my
5 past has made me who I am.

6 Q I mean, obviously, if you get to proceed forward
7 in education, you're probably going to have to fill out a
8 lot of forms that ask questions about convictions or
9 investigations. Do you intend to answer those all
10 truthfully?

11 A Absolutely, I have. I can say that in -- from --
12 in three years, I believe, from September 9, 2010, from that
13 date, I will be able to go back and try to get expungement
14 on my record. So, I'm not sure if that is --

15 Q Well, let's -- and I don't know what Kansas law
16 provides for setting aside convictions or expungement, but
17 if someone ever asked you a question about have you ever
18 been charged with a criminal offense or anything, would you
19 answer that truthfully even if the conviction had been
20 expunged?

21 A What I would say is I would talk to them about the
22 convictions. I don't necessarily know if they need -- if I
23 need to go into detail about what the actual charge was,
24 because that was not what I was convicted of.

25 Q Okay. You understand that various different

1 states have different laws on how they treat criminal
2 convictions and after post-conviction relief.

3 A Yes, sir. I can tell you that not all states --
4 I'm not aware of all states, but I do know of many in the
5 Midwest how they handle things.

6 Q You understand that on the Nebraska application
7 form, we're going to ask you a question of have you ever
8 been found guilty of a felony or misdemeanor or entered a
9 plea of guilty or no contest to a felony or misdemeanor.

10 A Yes, sir.

11 Q And even if you have your conviction in Kansas
12 expunged, how would you answer that question?

13 A Could you repeat the question?

14 Q Well, the question on our form asks, "Have you
15 ever been found guilty or entered a plea of guilty or no
16 contest to a felony or misdemeanor?"

17 A Yes, sir.

18 Q So, with that question in mind, you mentioned
19 getting your Kansas conviction expunged.

20 A Yes, sir.

21 Q Let's presume you do get it expunged.

22 A Yes, sir.

23 Q And you've still got to face that question on the
24 Nebraska application form. How would you answer that?

25 A I would answer it truthfully. I would say, yes, I

1 have misdemeanors on my record and I have my -- that would
2 be leaving my -- up into your hands. I have nothing to
3 hide. I would answer honestly, yes.

4 MR. HALSTEAD: I don't believe I have any more
5 questions, thank you.

6 THE HEARING OFFICER: Thank you. Any thing --
7 it's sort of the equivalent of -- if you had an attorney,
8 they'd have an opportunity to ask you additional questions
9 in response to things that Mr. Halstead brought up. So, my
10 question to you, is there anything else you would like to
11 say in connection with your petition, whether it's about you
12 or the stuff that you presented originally or in answer to
13 what Mr. Halstead said?

14 DR. WHEELER: Greg, tell them why you're doing
15 this.

16 MR. SMITH: Tell them why I'm doing this?

17 REDIRECT TESTIMONY

18 BY MR. SMITH:

19 Well, since I entered my education as a young
20 adult, I've wanted to be a teacher and a mentor. And I have
21 that opportunity right now, but I also think that there's
22 opportunities that may arise in the future that I would
23 really love to impact. Ultimately, I've thought very
24 carefully about, you know, maybe being a guidance counselor.
25 I happen to know that to be a guidance counselor in the

1 public school setting, you have to be a teacher for X amount
2 of years depending on what state you're in. Those are
3 reasons why I would really like to be considered, able to
4 enter the classroom.

5 THE HEARING OFFICER: Anything else? Keep in
6 mind, now is your chance to tell us. And Mr. Halstead had
7 informed me these are kind of informal, and I'm taking him
8 up on that. And they're not as adversarial as court
9 hearings are. I mean, Mr. Halstead is kind of in a unique
10 situation. Well, maybe it's not unique, but it's different
11 than a court situation where you've got two completely
12 adversary parties. And these are more informal, so anything
13 else you want us to know, anything else you want to tell us
14 about yourself, have at it.

15 MR. SMITH: What I did, I wrote something out just
16 in case this opportunity came up and it's just a general
17 statement over what I'd like to -- what I want you to know
18 about me.

19 Because of the decisions in 2004, I have learned
20 some hard but extremely valuable life lessons. I've fully
21 accepted the responsibility of those actions and faithfully
22 served all consequences related to those decisions I made as
23 a young adult. Over the past seven years, I have evaluated,
24 changed, and strengthened many personal convictions in which
25 I strive to live by every day.

1 I come in person today willing to answer any
2 questions or address my concerns that the State Board of
3 Nebraska may have regarding my past. My hope is to offer
4 insight into my life while humbly asking that all facts
5 necessary to determine whether I demonstrate the requisite
6 good moral character that is needed for the State Board --
7 needed to teach in this state are evaluated. I hope to earn
8 certification as an educator in order to impact lives in the
9 future, whether it's teaching the classroom material or
10 talking with them about the choices they make on a daily
11 basis. Something that maybe -- maybe if done more, I'm not
12 placing blame on that, but maybe could have shaped the
13 direction of my life. I am passionate about helping people
14 have positive lives.

15 I humbly appeal that my life the past and the
16 present will be evaluated carefully to consider whether I'm
17 fit to enter a classroom to student teach and ultimately in
18 hopes of completing a bachelor's degree in education, K
19 through 12, as well 7 through -- K through 12, phys ed, as
20 well as 7 through 12, history education.

21 THE HEARING OFFICER: Thank you.

22 Mr. Halstead, any additional questions that you
23 have?

24 MR. HALSTEAD: I don't have any others, thank you
25 very much.

1 THE HEARING OFFICER: Thank you.

2 You have two people witness -- or two people with
3 you. Do you want either of them to be a witness or to
4 testify on your behalf?

5 MR. SMITH: If they would like to say something on
6 my behalf, I would welcome that.

7 THE HEARING OFFICER: Well, if they want to they
8 can and if you want them to, they can, I guess.

9 MR. SMITH: Yes.

10 THE HEARING OFFICER: Okay, let's figure out --
11 Are you going to go first, sir?

12 MR. DeHART: Yes.

13 THE HEARING OFFICER: Would you raise your right
14 hand, please?

15 THE REPORTER: Do you solemnly swear or affirm the
16 testimony you're about to give will be the truth, the whole
17 truth, and nothing but the truth?

18 MR. DeHART: I do.

19 ROBERT DeHART

20 Called as a witness on behalf of the Petitioner,
21 having been first duly sworn, testified as follows:

22 THE HEARING OFFICER: Would you state your name,
23 spell your last name for us, please?

24 THE WITNESS: My name is Robert DeHart, last
25 name's spelled D-e-H-a-r-t.

1 THE HEARING OFFICER: Capital H?

2 THE WITNESS: Capital H, yes.

3 THE HEARING OFFICER: Okay. And I don't know how
4 you typically do this. Normally, someone asks questions of
5 them. So, I guess, kind of, Mr. Smith, you need to ask
6 questions to get him going.

7 DIRECT EXAMINATION

8 BY MR. SMITH:

9 Q Mr. DeHart, you knew me as a student coming in.

10 A Yes.

11 Q You had me in class.

12 A Yes.

13 Q You've also worked alongside me. In those
14 interactions, obviously, I've shared my life with you. Do
15 you have -- would you be willing to testify in terms of my
16 character, integrity, and any reservations that you may
17 have, if any, about me entering the classroom?

18 A Yes, I'd be happy to. Like Greg just mentioned, I
19 have had Greg as a student in class and I've also worked
20 side-by-side with him.

21 THE HEARING OFFICER: Why don't we back up for a
22 second. You say you've had him in class. Where have you
23 had him in class?

24 THE WITNESS: At York College.

25 THE HEARING OFFICER: At York. And I know that

1 there's a letter from you --

2 THE WITNESS: Yes.

3 THE HEARING OFFICER: And it's part of Exhibit 5
4 and it says you're a professor of education.

5 THE WITNESS: Yes.

6 THE HEARING OFFICER: And that's at York.

7 THE WITNESS: Yes.

8 THE HEARING OFFICER: And what kind of classes do
9 you teach?

10 THE WITNESS: I teach mostly special ed courses.
11 The course that Greg had me in is one that all of our
12 students take. It's an Intro to Exceptional Learners
13 course.

14 I might have had you in another course, because I
15 used to teach some in the P.E. Department, so I might have
16 had him in more than one class.

17 MR. SMITH: Yes.

18 THE WITNESS: It's been a while.

19 THE HEARING OFFICER: When would those classes
20 have been.

21 THE WITNESS: 2007, '8?

22 MR. SMITH: Actually, it would have been 2005 and
23 '6.

24 THE HEARING OFFICER: Okay, now, with that
25 background, would you go ahead?

1 THE WITNESS: And since 2005 and '6, after he was
2 hired as our wrestling coach, we worked together
3 specifically dealing with students that -- student athletes
4 that were under his care as a coach and then my care as a
5 teacher.

6 And I can say, that the time I've known Greg,
7 he's, you know, just to mirror some of the words that he
8 said, very passionate about what he does. Many of our
9 conversations centered on the decisions he was making with
10 his athletes and whether or not he was making the right
11 decisions, and I could tell he had internal struggle with,
12 you know, am I helping this person in the best way possible?
13 Am I giving them the correct direction? Am I mentoring in
14 the best possible way? Trying to balance tough love with
15 care and concern and compassion, you know, as many coaches
16 probably do. But, you know, I got to know Greg very well
17 through those situations, see in his heart, how he feels
18 about the wrestlers that he's working with, and really his
19 care and concern that he has for other people.

20 I know him and his wife pretty well. His wife is
21 very -- him and his wife are very active in our church.
22 They work with the youth there. I feel that they make a
23 good team with each other. They are very open, very
24 available to people that are around them. I, also, these
25 past few years, got to know Greg not just as a co-worker or

1 a student, but also as a friend, and appreciate the insight
2 he -- the conversations that we have with each other about
3 life in general, marriage, kids, work. You know, I think
4 we've been good for each other in that process.

5 I will say that with Greg, I, as a father of two
6 young daughters, would be proud to have him as an educator
7 for them and would be very trustworthy of him to be with
8 them and to do -- make decisions about their care, which,
9 with the process that he works within our church that we
10 attend, too, that he can very well be a mentor for my
11 daughters in the next couple years.

12 I feel he deserves a chance to teach. I know
13 there's bridges that will have to be crossed once he gets
14 there, application-wise, and questions that could come up
15 from parents, but I feel he's paid his dues. He's not just
16 made exterior changes for people to see, but if you could
17 really have a chance to look at his life, you could see the
18 changes have been from inside, too.

19 THE HEARING OFFICER: Any additional questions
20 that you have for Mr. DeHart, Mr. Smith?

21 MR. SMITH: No.

22 THE HEARING OFFICER: Mr. Halstead.

23 CROSS-EXAMINATION

24 BY MR. HALSTEAD:

25 Q Mr. DeHart, how long have you taught at York

1 College?

2 A Seven years. This coming fall will be my eighth
3 year.

4 Q And I think you indicated you teach education
5 students in special ed.

6 A Yes, for those who will teach special ed and for
7 physical education.

8 Q Okay. What's your background and education?

9 A My bachelor's is in history and P.E. and then my
10 graduate degree is special ed and as a transition
11 specialist, too.

12 Q You mentioned your kids. You're married?

13 A Yes.

14 Q How long have you lived in York?

15 A Probably -- well, I went to York College myself,
16 and probably close to 20 years, about 19 years.

17 Q With your degrees, did you ever teach in K-12
18 schools?

19 A Yes.

20 Q Where did you teach?

21 A In York.

22 Q York Public Schools?

23 A Yes.

24 DR. WHEELER: And Geneva.

25 THE WITNESS: Geneva was the YRTC, I worked there,

1 but at Epworth Village in York, too. I don't know if you're
2 familiar with that, too.

3 MR. HALSTEAD: Yes.

4 Q (By Mr. Halstead) And you said the youth facility
5 in Geneva?

6 A Yes.

7 MR. HALSTEAD: I don't have any more questions.

8 THE HEARING OFFICER: Thank you.

9 Mr. Smith, any other questions based on that?

10 MR. SMITH: No.

11 THE HEARING OFFICER: Thank you.

12 Did you want the other person that's here today to
13 testify or make a statement on your behalf also?

14 MR. SMITH: Please.

15 THE HEARING OFFICER: Ma'am, could I get you to
16 raise your right hand, please?

17 THE REPORTER: Do you solemnly swear or affirm the
18 testimony you're about to give will be the truth, the whole
19 truth, and nothing but the truth?

20 DR. WHEELER: I do.

21 DR. KATHLEEN WHEELER

22 Called as a witness on behalf of the Petitioner,
23 having been first duly sworn, testified as follows:

24 THE HEARING OFFICER: Would you state your name,
25 spell your last name for us?

1 THE WITNESS: Kathleen Wheeler, W-h-e-e-l-e-r.

2 THE HEARING OFFICER: And is there a letter from
3 you in this packet of Exhibit 5, too?

4 THE WITNESS: There is, yes.

5 THE HEARING OFFICER: Mr. Smith.

6 DIRECT EXAMINATION

7 BY MR. SMITH:

8 Q Dr. Wheeler, you, as well, had me as a student and
9 had worked alongside me as a co-worker at York College. You
10 provided a letter. Is there anything that you would like to
11 add to that letter or what you spoke about in the letter in
12 regard to my character and anything else regarding my
13 ability or your concerns or favor of entering the classroom?

14 A I think I'd like to go two different ways with
15 this, and first is Greg and who he is now. And as he came
16 to York College in 2004, he was, I think I said in my
17 letter, brash, but kindhearted. And he's still kindhearted,
18 but toned down just a bit and he is the most passionate and
19 sincere, wants to do what's right person that I know of.
20 And -- but bottom line, would I trust him with kids in the
21 school? I don't care what a good person Greg is. If I
22 wouldn't trust him in school, then I wouldn't be here at
23 this meeting, and that's the bottom line. It's not that we
24 don't have students that sometimes get, particularly in
25 secondary, we have three semesters in a row where we had

1 alpha females in high schools attack our student teachers in
2 small rural Nebraska. It's not that Greg wouldn't have a
3 problem with something happening, it happens all the time
4 with our students, but Greg would never precipitate
5 something. He would never start something. He would be
6 judicious. He would be -- I see that he would get both
7 sides of an -- a situation before he would make a judgment.
8 He would be fair. And I would trust him in the classroom
9 with students. I believe he would be worthy of this trust.
10 And that's all. I think he needs to be afforded that trust.

11 THE HEARING OFFICER: Any other questions of her,
12 Mr. Smith?

13 MR. SMITH: That is all.

14 THE HEARING OFFICER: Mr. Halstead.

15 CROSS-EXAMINATION

16 BY MR. HALSTEAD:

17 Q Ms. Wheeler, what's your background in education?

18 A My background in education? I have -- my
19 baccalaureate degree is in elementary ed. My master's is in
20 library science, and my doctorate is in middle school
21 curriculum and instruction.

22 Q How long have you worked at York College?

23 A Since 1991.

24 Q And what positions have you had at York College
25 since 1991?

1 A I have been an associate instruct- -- assistant
2 instructor, associate instructor, professor of teacher
3 education. I am, at this moment, department chair,
4 certification officer, intake coordinator, unit chair. I do
5 a lot of different things at York College. And I teach.
6 And we're going to start a graduate program this fall and
7 I'll be the coordinator of the graduate program.

8 Q Okay. And I think the petitioner mentioned you
9 had him as a student in one of your classes.

10 A Would be probably two.

11 MR. SMITH: Multicultural education.

12 THE WITNESS: Were you in Intro as well or had you
13 had that.

14 MR. SMITH: I had previously taken that.

15 A Yes, I had him in a class, but I'd been in
16 conversation much more than that. I teach the diversity
17 class, the Human Relations Multicultural Awareness.

18 Q (By Mr. Halstead) So that would have been the
19 course that you had him in.

20 A Yes.

21 Q He was a student of yours, okay. Did you interact
22 with him during his time at York College as a student?

23 A Yes. When he was going through his Kansas drama,
24 I was a part of his support system.

25 Q And you say "Kansas drama," that would be his

1 criminal conviction.

2 A Yes.

3 Q Just wanted to make sure we only have one drama
4 here we're working on.

5 MR. SMITH: That is -- there's only one.

6 THE WITNESS: The only one that I participated in.

7 Q (By Mr. Halstead) You're not aware of any other
8 dramas in Greg's life.

9 MR. SMITH: There isn't.

10 MR. HALSTEAD: Okay.

11 I don't have any more questions, thank you.

12 THE HEARING OFFICER: How big is York College?
13 How many students?

14 THE WITNESS: About 500.

15 THE HEARING OFFICER: Thank you.

16 Any other questions that you have for her, Mr.
17 Smith?

18 MR. SMITH: No.

19 THE HEARING OFFICER: Thank you.

20 Any additional evidence, anything you want to tell
21 us?

22 MR. SMITH: That is all.

23 THE HEARING OFFICER: Mr. Halstead, do you have
24 anything else?

25 MR. HALSTEAD: I have nothing else, Your Honor.

1 The exhibits that you've received are part of our evidence,
2 so I'd rest.

3 THE HEARING OFFICER: Well, you told me these
4 generally didn't take very long, and you were right.

5 You have an opportunity for a closing statement at
6 this point, Mr. Smith.

7 MR. SMITH: I just again, would like to thank you
8 for allowing me to express who I am now, to address some
9 past decisions and how those have impacted my life and those
10 around me. I, again, humbly ask that all facts and
11 information is looked at, evaluated, to determine whether
12 I'm fit to enter the classroom. I am grateful for how
13 diligent they are -- the Nebraska Board of Education is in
14 making sure that the right people are in there educating and
15 I understand how important that is. So, thank you, again.

16 THE HEARING OFFICER: Thank you.

17 Mr. Halstead.

18 MR. HALSTEAD: Very briefly. I think the
19 Commissioner denied the petitioner's request for two
20 reasons. Number one, he had just been released from
21 probation about a month prior to his filing the request with
22 the Commissioner, and number two, because there was a prior
23 State Board order saying that he lacked the requisite
24 abilities to be permitted for student teaching, that being
25 the order that's before you now. Obviously, I would submit

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)

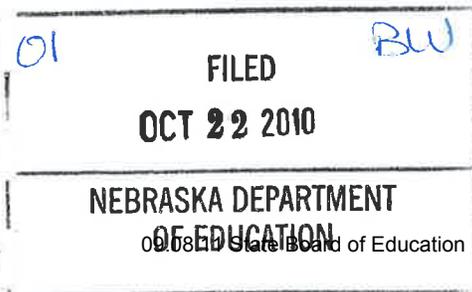
3. The following is a list of all convictions:

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



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 18th day of October, 2010.

Areg Smith
 Signature of Petitioner

2

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 19th 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

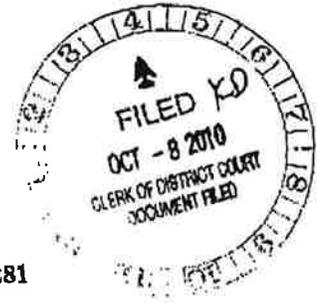
- Provided financial support for individuals/ groups for stateside & overseas mission trips

- 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:

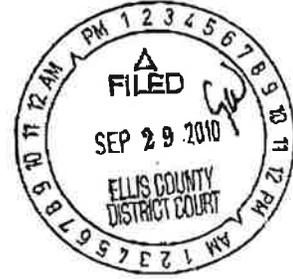
[Signature]

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

cc: Steve Lundy, CSO

6

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
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

MSHII/vs/ORTERMPROB\Smithg

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Gregory Allen Smith
1125 E. 8th Street
York, NE 68467,

Petitioner,

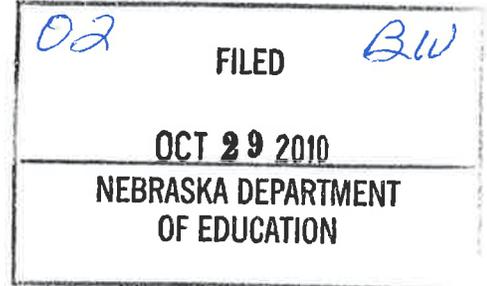
v.

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.

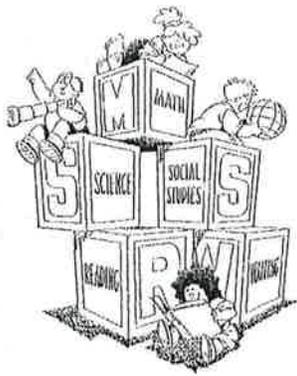
Roger D. Breed, Ed.D.
Commissioner of Education

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 29th day of October 2010:

Gregory Smith
1125 E. 8th 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. 8th 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

cc: York College



State Board of Education

Kandy Ines President District 7 350 20th Street Gering, NE 69341	Jim Scheer Vice President District 3 P.O. Box 16 Norfolk, NE 68702	Robert Evnen District 1 501 South 13th 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 Suite 100 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 8 726 South 107th Street Omaha, NE 68127
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an equal opportunity agency

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Gregory Allen Smith)
1125 E. 8th Street)
York, NE 68467,)
)
Petitioner,)
)
v.)
)
Roger D. Breed, Ed.D.)
Commissioner of Education)
P.O. Box 94933)
Lincoln, NE 68509-4933,)
)
Respondent.)

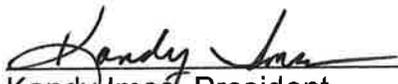
NDE Case No. 10-28

**ASSIGNMENT OF CASE
TO HEARING OFFICER**

Pursuant to Title 92, *Nebraska Administrative Code*, Chapter 61, the State Board of Education (AState Board@) hereby appoints John M. Boehm as the Board=s hearing officer in this case. The hearing officer shall conduct the hearing and submit proposed findings of fact, recommended conclusions of law, and a recommended decision to the State Board.

DATED this 8th day of December, 2010.

STATE BOARD OF EDUCATION

BY: 
Kandy Imes, President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Assignment of Case to Hearing Officer was served upon Gregory Allen Smith, 1125 E. 8th Street, York, Nebraska, 68467, via United States Mail, first class postage prepaid; and upon Brian L. Halstead, Assistant Commissioner/General Counsel, Nebraska Department of Education, 301 Centennial Mall South, Sixth Floor, Lincoln, Nebraska, via interoffice mail, all on this 8th day of December, 2010.

Brenda L. Wid

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Gregory Allen Smith)
1125 E. 8th Street)
York, NE 68467,)
)
Petitioner,)
)
v.)
)
Roger D. Breed, Ed.D.)
Commissioner of Education)
P.O. Box 94933)
Lincoln, NE 68509-4933,)
)
Respondent.)

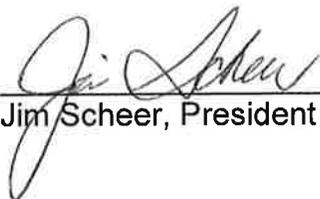
NDE Case No. 10-28

**REASSIGNMENT OF CASE
TO HEARING OFFICER**

Pursuant to Title 92, *Nebraska Administrative Code*, Chapter 61, the State Board of Education ("State Board") hereby appoints Rich Birch as the Board's hearing officer in this case. The hearing officer shall conduct the hearing and submit proposed findings of fact, recommended conclusions of law, and a recommended decision to the State Board.

DATED this 5th day of April, 2011.

STATE BOARD OF EDUCATION

BY: 
Jim Scheer, President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reassignment of Case to Hearing Officer was served upon Gregory Allen Smith, 1125 E. 8th Street, York, Nebraska, 68467, via United States Mail, first class postage prepaid; and upon Brian L. Halstead, Assistant Commissioner/General Counsel, Nebraska Department of Education, 301 Centennial Mall South, Sixth Floor, Lincoln, Nebraska, via interoffice mail, all on this 5th day of April, 2011.

Brenda L. Wid

49-599-30



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Gregory Allen Smith)
1125 E. 8th Street)
York, NE 68467)

Case No. 10-28

Petitioner,)

NOTICE OF HEARING

vs.)

Roger D. Breed, Ed.D.)
Commissioner of Education)
P.O. Box 94933)
Lincoln, NE 68509-4933,)

Respondent.)

TO: GREGORY ALLEN SMITH, Petitioner:

BRIAN L. HALSTEAD, Attorney for Respondent:

You are hereby notified that the hearing in the above entitled matter will be held on June 20, 2011, beginning at 9:00 a.m. The hearing shall be held in Conference Room A at the Nebraska Department of Education, 6th floor, 301 Centennial Mall South, Lincoln, Nebraska, 68509. The hearing will be conducted in accordance with 92 NAC 61-007.


Richard A. Birch, Hearing Officer
NIELSEN & BIRCH
P.O. Box 1006
North Platte, NE 69103-1006
(308) 532-3150

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon Mr. Gregory Allen Smith, 1125 East 8th Street, York, NE 68467 and Mr. Brian L. Halstead, Attorney for Respondent, Nebraska Department of Education, 301 Centennial Mall South, Sixth Floor, Lincoln, NE 68509 by placing in the U.S. First Class Mail, postage prepaid, on May 25, 2011.


Richard A. Birch

**NEBRASKA DEPARTMENT
OF EDUCATION**

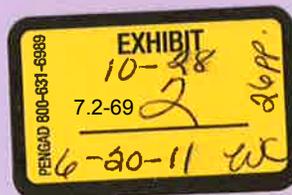
RULE 20

**REGULATIONS FOR THE APPROVAL OF
TEACHER EDUCATION PROGRAMS**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 20**

**EFFECTIVE DATE
JANUARY 19, 2008
(REVISED)**

**State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509
Douglas D. Christensen, Ph.D.
Commissioner**



NEBRASKA DEPARTMENT
OF EDUCATION

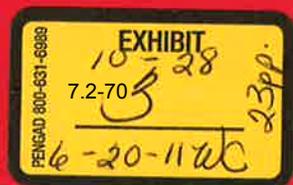
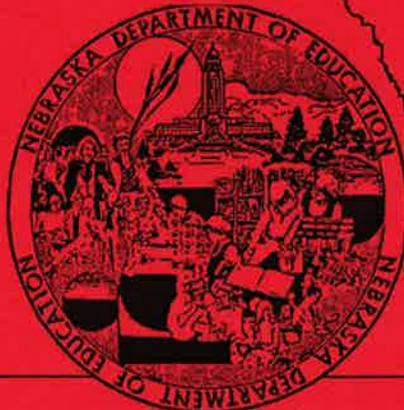
RULE 61

RULES OF PRACTICE AND PROCEDURE FOR HEARINGS IN
CONTESTED CASES BEFORE THE DEPARTMENT

TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 61

EFFECTIVE DATE
OCTOBER 1, 1997
(REVISED)

State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509



~~Exhibit #1~~ R.A.S.

Other Relevant Data: Greg Smith

Professional Responsibilities:

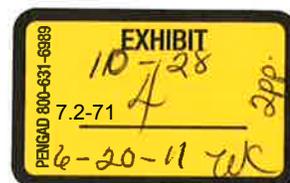
- Associate Head Wrestling Coach/ Recruiter (April 2010 – present)
 - Coaching/ Mentoring
 - Scheduling/ Budgeting/ Fundraising
 - Recruiting/ Retention
 - Promoting
- Thomas Hall North Men’s Residence Director (August 2010 – present)
 - Mentoring/ Disciplining sophomore male Residents
 - Directing monthly meetings (Hall policy & procedures)
 - Overseeing & Assisting four Residence Assistants
 - Directing weekly meetings that prepare them to be leaders both professionally, and personally
- 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

Professional Recognition:

- April 22, 2010: Awarded the York College Second Miler Award: For going the extra mile in service. Awarded by President Steve Eckman.
- May 13th, 2010 Publicly recognized by the York College Board of Trustees

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



Additional Service & Mission Work (Continued):

- 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 Summer League – Summers of 2009, 2010, 2011
- Supported York College & York Area Community in the following ways:
 - Walked/ Participated in Yorkfest Parade (past 7 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 Jaclyn (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
 - Provided financial support for numerous individuals & groups for stateside & overseas mission trips
- Faithfully adhered to all requirements of sentence:
 - Released from Probation: Sept. 9, 2010 (Ellis County)
 - Served jail sentence (40 days); completed in July, 2007

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)
 - Honored as York College Male Scholar-Athlete of the Year (2005-2006)

Hope to complete requirements for NE Teacher Certification:

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



YORK COLLEGE

Office of the President

June 15, 2011

Mr. Richard Birch
Nebraska Board of Education
301 Centennial Mall South
Lincoln, NE 68509

Dear Mr. Birch:

Greg Smith is an employee of York College who has displayed exemplary personal character, integrity and work ethic during my tenure as president. It is my understanding that Greg was not previously a candidate for student teaching or teacher certification due to a previous legal infraction. Greg has made significant and permanent changes in his life since that time that I believe alter his circumstances, and I support his appeal to allow him to pursue his goal of teaching.

Since I have known Greg he has been an upright man of character. I believe much of the change from his previous life is due to the influence of his wife and his conversion to Christianity. Greg regularly attends student devotionals and is a counselor for many of our students who face struggles such as he has encountered.

While I did not know Greg before his infraction, I have become a close friend as well as a mentor since my arrival in January 2009. The young man I am familiar with is a man of faith and character. His dedication to his job has earned him recognition from his co-workers. The York College Board of Trustees recognized Greg in their May 7, 2010 meeting by passing a resolution honoring his spirit of sacrificial giving for the good of the College. This is not a normal Board action; in fact, it is the only one I am aware of and points to the esteem in which Greg is held.

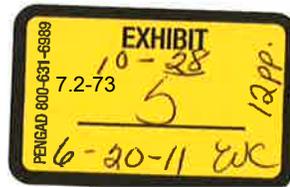
If you wish further information or would like to talk to me directly concerning Greg's life and commitment, please feel free to call me at 402-363-5621.

Sincerely,

Steve Eckman
President

"The mission of York College is to transform lives through Christ-centered education and to equip students for lifelong service to God, family and society."

09.08.11 State Board of Education
1125 East 8th Street • York, Nebraska 68467-2699 • (402) 363-5621 • FAX (402) 363-5667





YORK COLLEGE

The Office Of Campus Life

June 14, 2011

Mr. Richard Birch (Hearing Officer)
Nebraska Board of Education
301 Centennial Mall South
Lincoln, NE 68509

SUBJECT: GREGORY A. SMITH

I am offering my support and recommendation on behalf of Gregory A. (Greg) Smith as you review his file regarding his application to obtain approval to receive a Nebraska teaching certificate as he seeks a reversal of a decision made in June 2007.

I have known Greg since he began attending York College in the fall of 2004. I have seen a transformation in Greg's life. When he first arrived, he displayed signs of anger and misplaced blame. While here, he underwent a conversion experience and he is a different man today that he was seven years ago. He shifted from being self-centered, angry, and unhappy to serving, content, and joyful. These are not changes that can be easily faked. Greg's growth has taken place over a period of years and he has maintained his focus and commitment to being a good man. He has not merely talked about his intentions to change, he has changed.

The College hired Greg as the head coach for the men's wrestling program in 2007. He served in that role until last spring when he approached the Athletic Director and me (I oversee Athletics) with the desire to step down in order to pursue student teaching and complete his education degree. We reluctantly agreed, but due to his influence with members of the team, we insisted he remain with the program as an assistant coach. He has continued working with the program and his humility and servant heart has meant we have not dealt with egos or conflict between him and the head coach. In fact, the two make a great leadership team for our wrestlers.

On a related note, I also hired Greg as the manager of a men's residence hall on campus. As a role model, he has done a great job mentoring young men in that building. His perspective and life experience aids him in counseling young men to think about the consequences to choices they face. As an employee, I do not have to think about the things I turn over to Greg because I know they will be handled and handled well. Simply put, I trust Greg Smith.

I also serve as an elder at the East Hill Church of Christ where Greg and his wife are members. Greg is faithful in attendance and service. He gives of his time in teaching the teens and participates in the men's ministry. If ever a man has given back and overcome his past, it is Greg Smith.

Greg quickly admits it when he makes a mistake and accepts responsibility for his actions. It is this transparency and his consistency over the past four years that leads me to trust him. I simply have no reason to believe that my trust is misplaced. Last summer, I allowed him (in fact I asked him) to take my 14-year old daughter (and one of her friends) with him to Wisconsin to attend a youth camp. Once there, they stayed with his wife's family and the four of them returned two weeks later. Let me be clear: if I had any reservations about Greg or his integrity or his morality, I would have driven my daughter myself (something I have done before and will do again). As a parent, I would never place my child in a risky situation. Greg is not a risk, he is trustworthy and a man who lives out his beliefs each day.

I realize that you do not know Greg and the purpose of this review is to assess where he is at, determine his fitness for teaching, and to consider his request. I ask you grant approval of his request.

If you have any further questions regarding Greg or if I need to meet with you, please do not hesitate to call. Thank you for your consideration of this matter.

Sincerely,



Dr. Shane Mountjoy
Vice President for Student Development
Dean of Students
York College
402-363-5614 / mountjoy@york.edu



EDUCATION DEPARTMENT

1125 E. 8th St. York, NE 68467-2699
402-363-5694 www.york.edu

Mr. Birch and Nebraska State Board of Education,

My name is Robert DeHart and I am a Professor of Education at York College. I am a full-tenured professor and I am entering my 8th year of service at York College in the Education Department. I am writing this letter on behalf of Mr. Greg Smith. I have known Greg for about 5 years now. I have had him as a student in class and have worked with him over the past few years as he has been on our York College Wrestling staff. I understand that Greg has made some mistakes in his past, but I hope you will take the opportunity to see where he is today. He has grown into a very respected and loved individual. He is a spiritual leader on our campus and mentors many young athletes in a strong and positive manner. When I see Greg, I see a man that is remorseful of past decisions, but I also see a man with a vision for his future. He has worked very hard to change his life to be able to accomplish his goal of becoming an educator. I truly believe with all that I am that he has paid his dues and deserves a chance to become a teacher.

I see Greg as a person with strong convictions and moral character. I have two young daughters that I would be proud to let Greg teach and mentor if the situation should ever arise. I hope that you will strongly consider giving Greg the opportunity he deserves to fulfill his dream of becoming an educator. I am available for any questions that you may have for me. You may call my cell (402-366-7241) or email me at bdehart@york.edu. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert DeHart".

Robert DeHart,
Professor of Education

4



EDUCATION DEPARTMENT

1125 E. 8th St. York, NE 68467-2699
402-363-5694 www.york.edu

June 17, 2011

Dear Mr. Birch,

When I first met Greg Smith (fall 2004), he was a brash, likeable transfer student. He threw himself into his studies and athletics with determination and focus. As his problems from Kansas followed him to Nebraska, Greg was shown kindness, care, and concern from those who were his teachers, coaches, and friends. He continued his studies to graduate with a Bachelor of Arts in General Studies with an emphasis in Education.

The Greg Smith I know now is a mature, conscientious, and kind man. He has taken his adversities to heart and has purposed to be a different kind of person than the one who came to York College in 2004.

Because this appeal concerns working with students, and that is ultimately all of our greatest concern; I believe that Greg Smith should be allowed to complete his Teacher Education program by being allowed to enroll in student teaching. I make this plea with confident belief that Greg Smith will behave in a professional manner with all personnel involved in student teaching; he will perform the tasks required with adult maturity; and he will take direction regarding any concerns that might arise. Because my professional goal is to ensure that the best teachers possible graduate from York College, as Education Department Chair, I believe that Greg Smith will go above and beyond what is expected of him for the sake of his students.

Sincerely,

Dr. Kathleen B. Wheeler

Education Department, chair



YORK COLLEGE
ATHLETIC DEPARTMENT

To the Nebraska State Board of Education & Mr. Richard Birch:

I learned of Greg Smith's past after he had drastically changed his life. Through developing a relationship with him as a friend and as a boss I discovered he had made mistakes in his life. I learned about his past from him; things he wasn't proud of and things he wished he could change. If there ever was an individual who could reverse his mistakes by making up for them in good works – Greg is one of them. The person he used to be is not the man I know and work with everyday.

For about five years now I have known Greg Smith. I've learned his life goals. I've seen him interact with peers, college students and myself as his boss and I'll say with confidence. His humility and Christian conviction is superior to others his age. He works extremely hard and cares very much about people and expresses his love for others in his service. Greg has been on our coaching staff now for 5 years I believe and he has impacted the lives of hundreds. He is a great York College employee. He selflessly serves our students and our staff and asks for no recognition.

In summation, I can say without reservation that Greg Smith is a good influence, and a hard-worker. He's also a man fully aware of his past and has made the necessary changes because his faith has guided him to a higher place. I don't just work with Greg Smith; I know Greg Smith and feel confident with him guiding the hearts of minds of the student-athletes here at York College and anywhere else.

If I can provide any further information, please contact me at jastark@york.edu

Respectfully,

Jared A. Stark
Athletic Director – York College

NATIONAL ASSOCIATION OF
INTERCOLLEGIATE ATHLETICS



Ramon A. Diaz
1125 E. 8th Street
York, NE 68467
June 19, 2011



YORK COLLEGE
ATHLETIC DEPARTMENT

Nebraska State Board of Education
& Mr. Richard Birch

Dear, Mr. Richard Birch:

I am the current Head Wrestling Coach for York College, and I am writing to express my full support for Greg Smith in the pending decision to teach in the State of Nebraska. I believe he has demonstrated in the past two years, the requisite of good moral character and moral fitness for teaching.

Greg Smith has made me aware, in detail, of his actions as a young adult in May of 2004 (prior to York College) that carried legal consequences (misdemeanor). These consequences according to Nebraska State legislation deemed him ineligible to student-teach in a public school setting. I understand this decision was made by the Nebraska board of Education in June of 2007. I am grateful for the process that the Nebraska Board of Education goes through to protect its students.

I would like to express to you and the Board why I believe Mr. Smith has demonstrated good moral character. Greg Smith was the Head Wrestling Coach for York College the previous three years, until I took over this past year. In September of 2009, I met Mr. Smith, at that time I was a Graduate Assistant for Wrestling at Concordia University in Seward, Nebraska. Over the 2009-2010 Season we met each other at local tournaments and we wrestle each other twice in team duals, during these meets we had numerous conversations about wrestling, character, and God.

From these conversations, Greg, contacted Concordia and asked the Head Coach, Doug Reese, if he could contact me regarding taking over the Head Wrestling Coach position with York College. Mr. Reese informed me of the conversation and allowed me to contact Greg regarding the position. I was amazed at the humility that was displayed by Greg, he asked me if I would take over the program and then he asked if he could be my assistant, in addition, to mentor him in his relationship with God. I contacted the York College Athletic Director, Jared Stark, and asked him if Greg Smith was being released and he informed me that the coaching position had been offered to Greg for the following year. Again, I was stunned, here is a young man who is the Head Coach of a College program and he is willing to give it up and loose his income to be mentored by me. Over the last year and half I have met with Greg daily and he has become a dear friend. I have personally seen Greg grow in all areas of his character and would be honored to have him teach and work with my children, who are in the York Public School District.

If you have any questions regarding his character or if you need me to testify on his behalf, please feel free to contact me.

Sincerely,

Ramon A. Diaz





SEQUOIA CONSULTING GROUP

May 27, 2011

Mr. Richard Birch
Nebraska State Board of Education
301 Centennial Mall South
Lincoln NE 68509

RE: Greg Smith

Dear Mr. Birch:

Allow me to introduce myself, I am David Lynn, of York, Nebraska. I have served as a York County Commissioner, Vice President of Finance at York College and currently serve on the Board of Trustees of York College. I am President of Sequoia Consulting Group, a public sector consulting firm based in Avon, Indiana. I own several ag-related businesses in the York area and also serve as an elder at the East Hill Church of Christ where Greg Smith is a member.

I am writing this letter in support of Greg Smith, I have known Greg since 2006 and have found him to be an extraordinary young man. I know that as a very young adult, Greg made some poor decisions that impacted him in a very profound way. Many times, people become the victims of their circumstances, but Greg has become a victor over his. His work at York College as Wrestling Coach and now Assistant Coach has impacted the lives of many young men in a very positive way. Greg worked for me in 2007 helping with inventory at Northern Agri-Services in Henderson. I found him to be a very conscientious employee with a positive attitude.

Last year, Greg spoke at a Board of Trustees Dinner and told the story of how the decisions he had made have impacted his life and the transformation he went through as a student at York College. It was a powerful testimony to the good that is in every human being. He has become a humble, honest hard working young man of good character and reputation.

I know that Greg wants to teach and I believe that he would be an excellent teacher who will educate and encourage students wherever he goes. I know that his past presents some difficulty in achieving that goal and I also know that he has learned from his

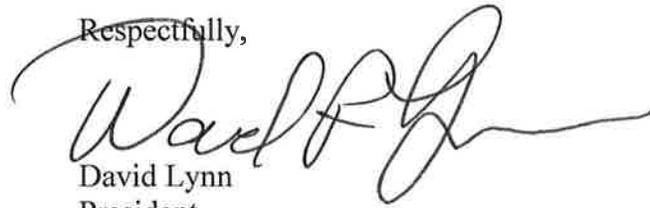
Providing Professional Services to the Public Sector

mistakes. I believe that his life experience will be of benefit in working with students that are struggling in school because of difficulties in their personal lives.

I respect Greg for what he has overcome and the man he has become and would encourage you to consider his application for a teaching certificate.

Please feel free to contact me if you need any additional information or have any questions.

Respectfully,

A handwritten signature in cursive script, appearing to read "David Lynn", with a long horizontal flourish extending to the right.

David Lynn
President

To the Nebraska State Board of Education and Mr. Richard Birch,

Allow me to begin by expressing my sincere gratitude for your willingness to consider this brief character reference on behalf of Greg Smith.

Since 2005, I have served as the Head Teacher for a two-week summer camp session at Wisconsin Christian Youth Camp. As a current Board Member and Head Teacher for this organization, I can attest to the vigilance and discretion employed in the selection of our staff members and teachers. Only those who possess the finest moral character are entrusted with the responsibility of counseling and teaching the youth who attend our sessions each summer.

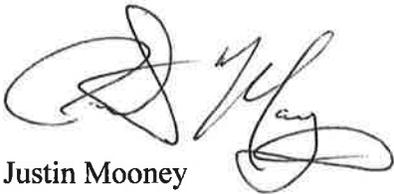
I have had the privilege of working with Greg Smith for the past two summers at our camp session, for which Greg has sacrificially volunteered his services as a staff member, counselor, and teacher. The chief qualities that I have observed in Greg are his passion and determination when it comes to being a man of good character. Rooted in his desire to live a life of integrity and responsibility, Greg's character and personality has proven to be exceptionally beneficial and influential in the lives of our teenage campers, many of whom look up to Greg as a mentor and role model.

The class that Greg teaches focuses primarily on developing strong moral leadership qualities in the young men who attend our session. Greg possesses a unique ability to inspire, encourage, and lead people. This ability to help others become better people comes not from persuasive speech, but through the moral integrity and personal responsibility which Greg demonstrates in his own life. The youth at our camp sessions correctly perceive the honorable qualities which Greg possesses, and that in turn motivates them to become better citizens, better leaders, and better people in light of Greg's curriculum. I witness this transformation take place in them every year through the outstanding instruction they receive from Greg Smith.

In closing, I would like to mention that Greg has also had a significant influence on me personally. As someone who makes every effort to live a life of honesty and integrity, I find Greg to be an excellent and influential role model for the type of person I strive to be. He has taught me what it means to take responsibility for one's actions, to make the difficult but necessary changes, and to begin again in a new and positive direction. He has also demonstrated to me that a lifestyle of sound judgment and wisdom produces great results, not only in our own life, but also in the lives of those around us.

Thank you once again for your consideration of this letter of recommendation on behalf of Greg Smith.

Sincerely,



Justin Mooney

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Gregory A. Smith
2220 N. Nebraska Avenue, Apt. 20
York, NE 68467,

Petitioner,

v.

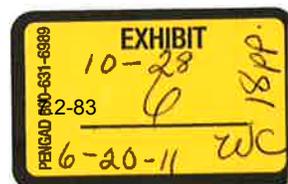
Douglas D. Christensen
Commissioner of Education
P.O. Box 94933
Lincoln, NE 68509,

Respondent.

NDE Case No. 06-22

FINAL ORDER

Petitioner, Gregory A. Smith, filed this appeal pursuant to Title 92, Nebraska Administrative Code, Chapters 21 and 61, requesting that the State Board of Education ("State Board") direct the Commissioner of Education to allow him to participate in pre-student teaching field, laboratory, and classroom experiences or student teach. This matter was assigned for hearing to John M. Boehm, Hearing Officer for the State Board, and his recommendation is attached hereto and made a part of this Final Order by reference. It is the decision of the State Board that the proposed findings of fact, recommended conclusions of law, and recommended decision are hereby adopted, and that the Petitioner's request for approval to participate in pre-student teaching field, laboratory, and classroom experiences or student teach in Nebraska should be denied.



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA



Gregory A. Smith)
2220 North Nebraska Avenue, Apt. 20)
York, NE 68467)

Case No. 06-22

Petitioner,)

v.)

HEARING OFFICER'S PROPOSED
FINDINGS OF FACT, RECOMMENDED
CONCLUSIONS OF LAW AND
RECOMMENDED DECISION

Douglas D. Christensen)
Commissioner of Education)
P.O. Box 94933)
Lincoln, NE 68509)

Respondent.)

Petitioner, Gregory A. Smith, filed a Petition with the State Board of Education, pursuant to the provisions of Title 92, Chapters 20, 21 and 61, Nebraska Administrative Code (NAC), requesting approval to participate in prestudent teaching field, laboratory, and classroom experiences or student teach in schools in Nebraska. An answer was filed by the Respondent, Douglas D. Christensen, Commissioner of Education, who had previously denied this request.

A hearing was held on April 2, 2007, before John M. Boehm, Hearing Officer, appointed by the State Board of Education pursuant to Title 92, Chapter 61, Nebraska Administrative Code. Notice of the hearing was provided to the parties. The hearing commenced at 2:11 p.m., in the V-TEL Conference Room, Nebraska Department of Education, Sixth Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Petitioner appeared and presented sworn testimony on his own behalf. Petitioner also presented three witnesses, Erin DeHart, Clark Roush and Kathleen Wheeler, who testified for Petitioner. The Respondent, Commissioner of Education, was represented by Scott Summers, Legal Counsel, Nebraska Department of

Education, who cross-examined Petitioner and the witnesses. The parties jointly offered Exhibits 1 through 13 which were received without objection. Petitioner subsequently offered Exhibits 14 through 19 which were also received without objection. The hearing was recorded by General Reporting Service of Lincoln, Nebraska. A transcript of the hearing is attached.

Having considered the sworn testimony of the witnesses and the exhibits, the Hearing Officer makes the following proposed findings of fact, recommended conclusions of law, and recommended decision.

PROPOSED FINDINGS OF FACT

1. Petitioner filed a request for approval to participate in prestudent teaching field, laboratory, and classroom experiences or student teach on September 18, 2006.

2. On October 2, 2006, the Commissioner of Education denied Petitioner's request citing: that (1) Petitioner had been charged in May of 2005 with rape, a felony offense; (2) Petitioner had, pursuant to a plea bargain in August of 2006, pled guilty to three counts of battery under Kansas law, misdemeanor offenses; (3) Petitioner was sentenced to five years of probation; (4) Petitioner was 22 at the time of the incident; and (5) it had been only a month since Petitioner's conviction.

3. Petitioner timely filed his Petition for approval with the State Board of Education on October 17, 2006.

4. Petitioner is 24 years old and is a senior at York College, York, Nebraska.

5. Petitioner graduated from Concordia High School in York in 2001. Petitioner attended Labette Community College in Parsons, Kansas after graduation from high school.

6. Petitioner was completing his course work at Labette Community College when on May 6 and 7, 2004, he visited Ft. Hays State University in Hays, Kansas, for the purpose of

preregistering for fall courses. Petitioner had been offered a wrestling scholarship at Ft. Hays State, and was also to sign a letter of intent with the wrestling coach. He was staying with an acquaintance, Ryan Phillips, who was also a wrestler at Ft. Hays State, in a private residence occupied by several students that was known informally as the “wrestler house”.

7. Petitioner was 21 at this time. He and Mr. Phillips went to a bar that evening where they consumed several pitchers of beer over a four hour period. There they met three women who were students at Ft. Hays, including the eventual “victim” in this matter. (The name of the female involved in this situation has had her name redacted from the record and therefore she will be referred to throughout as the “victim”.) The victim, who was 20, apparently did not drink at the bar. She had previously had three or four shots that she consumed at her place of residence prior to going to the bar.

8. When the bar closed the Petitioner, Mr. Phillips and the three girls went to the wrestler house. The time was approximately 1:00 a.m. on the 7th when they arrived. The group consumed more shots of liquor. The victim had approximately six shots in an hour. The victim was about 5’2” and weighed 105 pounds.

9. At some point, Petitioner and the victim went into Mr. Phillips’ bedroom where they kissed and fondled for 15 or 20 minutes. Mr. Phillips returned to his room and asked the couple to leave. The other two women, one of whom was the victim’s older sister, then left while the victim indicated she wanted to stay. Petitioner and victim then went to a couch in the living room area where they engaged in sexual intercourse.

10. Mr. Phillips returned to the living room with a video camera while Petitioner and victim were engaged in sexual intercourse and began videotaping them. Petitioner was aware of Mr. Phillips presence but did not stop his activity nor object in any way.

11. Mr. Phillips proceeded to videotape the two resulting in a videotape of some 32 minutes in length. There were hand signal communications between Petitioner and Mr. Phillips on the tape and at times the camera was stopped. During the taping, another male came into the room and observed the activity being videotaped. The videotape purports to show the victim at times in some degree of active participation, but also times when she appears to be asleep or passed out.

12. Finally, other people came into the room, and the Petitioner and victim ceased to engage in sexual activity. Petitioner went upstairs to shower and left the victim on the couch. At this point in time, a couple of the other residents of the house took markers and pens and wrote on the victim while she was passed out on the couch. This activity was also videotaped. The victim was only partially clothed at the time.

13. After Petitioner showered, he then went to get a piece of pizza from the refrigerator. After that he returned to the living room area where victim was still on the couch. Petitioner and victim again engaged in intercourse. No other parties were present at this time.

14. After finishing, Petitioner went upstairs and slept. Petitioner again left the victim lying on the couch in the living room.

15. Petitioner woke up at 9:00 a.m. and on his way out went past the living room. He observed the victim in the living room who appeared to be calling someone for a ride. Petitioner did not speak to her but smiled and gestured or waved. Petitioner then attended his preregistration activities. Before leaving Hays, Kansas, Petitioner obtained the videotape from Mr. Phillips and took it with him when he returned to his home in Concordia, Kansas.

16. The victim awoke on the morning of the 7th in the wrestler house at about 10:30 a.m. She was not fully dressed and her clothes were askew. Mr. Phillips was telling her to look

at what they had written on her backside and several other males present told her various stories about what happened last night and were making fun of her. She did not remember anything after drinking two shots of liquor at the wrestler house earlier that morning. She felt physically uncomfortable and chaffed and therefore went to the hospital where it was determined she had swelling and redness of her genitals as well as yellow and gold marker writing on her thigh, including the name "Aaron". The victim claims the sex was not consensual.

17. Later that day Petitioner and Mr. Phillips were attending a track meet which involved Petitioner's sister when they received a call from the coach at Ft. Hays State University directing them to return because of this incident. Word spread in the Ft. Hays University community that the activity may not have been considered consensual. At some point afterwards, the wrestling coach at Ft. Hays University told Petitioner that he would not be on the wrestling team.

18. The Petitioner turned the videotape over to his attorney, who eventually provided it to local law enforcement officials investigating the matter.

19. The tape was eventually reviewed by Timothy Scanlan, MD, of Addiction Specialists of Kansas, Inc. at the request of the County Attorney. Based on his review of the videotape he concluded that the female participant was not fully conscious and an active participant in the activity and much of the time she appeared to be asleep or nearly so. Her movements were generally reflexive and most appeared "non-purposeful". At times she was passed out. He further gave his opinion that the female victim may have suffered from an "alcoholic blackout" and did not appear to be functioning well enough to cognitively give informed consent.

wrote a letter to Petitioner in which she accepted his apology and also described the mental and emotional trauma that the incident had caused her.

24. Petitioner was given leave to serve the 40 day jail time in minimum ten day increments. He was also assessed court costs and other fees. As of the date of this hearing, the Petitioner had served 20 of those days.

25. After finishing Labette Community College, Petitioner elected not to go to Ft. Hays State University and decided to attend York College in York, Nebraska.

26. Petitioner has completed all of his credit hours prior to his student teaching requirement and is eligible to graduate from York College with a general studies degree. He has spent the last semester coaching.

27. Since high school Petitioner has held various summer jobs and also performed various work study jobs. At the present time he is a paid assistant wrestling coach for York College. Also while at York College he worked for Epworth Village. His GPA at York College is 3.7.

28. At Epworth Village Petitioner worked with youth as a relief life skills trainer for children 8 to 18 years of age, assisting them with different activities. He recently took himself off of the relief staff because he would not be able to fulfill his weekly work shift requirements while serving the remainder of his jail time.

29. Erin DeHart is a faculty member in the Department of Education at York College who taught Petitioner in three of his education courses. She stated that he is a hard working student, respected by his peers, a leader in the classroom and has a good understanding and appreciation of meeting a student's needs. She has also observed him in previous field experiences in 2004 prior to his conviction. He was always willing to volunteer and at her

request became a peer tutor on campus this last semester in addition to his other commitments. She is comfortable with him around her own children and endorses him for student teaching and ultimately as a teacher.

30. Dr. Clark Roush is the Chair of the Music Department at York College. He also sits on the Teacher Education Council. Petitioner is a friend of his son and they belong to the same college social club, Alpha Chi Epsilon. He knows Petitioner's fiancé who is in his choir and Petitioner has spent time at his choir practices. He also knows the family of Petitioner's fiancé. He has been very impressed by Petitioner and has had occasion to talk with Petitioner during which Petitioner demonstrated remorse for his past actions. Petitioner has spoken in chapel and Dr. Roush states that Petitioner has acquired personal and spiritual anchors in his life.

31. Dr. Kathleen Wheeler is the Chair of Teacher Education at York College. She first met Petitioner when his family came to inquire about York College in 2004. She has observed him as a student and has taught him in a human relations class. She knows his fiancé who is also an education major. She believes that Petitioner will be an effective and positive teacher.

32. Petitioner also submitted nine letters of recommendation from the following individuals:

- (a) Cheryl Hochhalter is the Principal at Concordia Junior-Senior High School who knew Petitioner while he attended high school. She considers him a fine young man who was a leader among the student body. She also observed him while he did an observation in her building as a part of his education program. She is aware of his conviction. She recommends him as a student teacher and a future teacher.

community. She trusts him with her children. Petitioner was a member of a religious education class that she taught to high school students and he is respected in the community.

- (g) Tim Lewis is the campus minister at York College and he has had contact with Petitioner on almost a daily basis. He attends campus worship events with Petitioner and is the sponsor for the social club in which Petitioner is an active member on campus. Petitioner is a leader and respected by his peers. In spite of his many activities, Petitioner has made himself available to provide leadership on campus. He believes Petitioner has learned from his past mistakes and strongly recommends him.
- (h) Professor Russ Dudrey is a faculty member in the Department of English at York College who has known Petitioner for three years. He was also the head coach of the York wrestling team when Petitioner was co-captain. He has observed him at practice and on wrestling trips, as well as in his home. He has come to know Petitioner and his parents well. He states Petitioner is a leader, and is trustworthy, disciplined, and motivated. Petitioner is well liked among the student body, and he was elected as homecoming king. He recommends Petitioner as a student teacher as well as a teacher and coach.
- (i) Dr. Larry A. Van Meter is the Chair of the Department of English at York College. He has known Petitioner for two years. Petitioner was a student in his class. Petitioner was a good student as well as a leader and well respected on campus among both peers and faculty.

RECOMMENDED CONCLUSIONS OF LAW

1. Title 92, NAC 20 § 005.07B provides that a person with a conviction as defined in § 005.07A, shall not be allowed to participate in prestudent teaching field, laboratory, and classroom experiences or student teach without approval by the Commissioner or the Board.

2. Title 92, NAC 20 § 005.07A(2) provides that “a misdemeanor conviction involving abuse, neglect, or sexual misconduct means an offense under the laws of any jurisdiction, which, if committed in Nebraska would constitute one of the following misdemeanors: “005.07A2a Assault (third degree) (28-310)” and “005.7A2e Sexual Assault (third degree) (28-320).”

3. Under Kansas law, K.S.A. 21-3412(2) defines battery as “ (1) intentionally or recklessly causing bodily harm to another person; or intentionally causing physical contact with another person when done in a rude, insulting or angry manner.”

4. Neb. Rev. Stat. § 28-310 (Reissue 1995) provides that “(1) A person commits the offense of assault in the third degree if he: (a) Intentionally, knowingly, or recklessly causes bodily injury to another person; . . .” Assault in the third degree is a Class I misdemeanor.

5. Neb. Rev. Stat. § 28-320 defines sexual assault, second or third degree; as follows: “(1) Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree.” Sexual assault in the third degree “is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim”.

6. Neb. Rev. Stat. § 28-311.08 (2006 Cum. Supp.) provides that “(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent or knowledge in a place of solitude or seclusion.” Intrusion is further defined as “viewing or recording, . . .by video. . ., of a person in a state of undress.” Violation of this section is a Class III misdemeanor.

7. The conduct for which Petitioner was convicted under Kansas law would be the equivalent of an offense in Nebraska under one or more of the above three Nebraska statutes.

8. A person with a conviction as defined in Title 92, NAC 20 § 005.07A may request approval by the Commissioner or the Board by using the procedures set forth in Title 92, NAC 21 § 009.02 through § 009.04.

9. If the Board finds that the applicant has good moral character and possesses the moral fitness for teaching, then the Board may direct the Commissioner to approve the request to participate in prestudent teaching field, laboratory, and classroom experiences, or student teach.

10. In determining whether the applicant has good moral character and the moral fitness for teaching, the following factors shall be considered:

- (a) The nature of the crime, the facts and circumstances surrounding the conviction, including whether the conduct of the applicant would constitute a crime in Nebraska, the sentence received and whether the sentence was commuted, set aside or pardoned;
- (b) The applicant’s age at the time of the conduct;
- (c) The recency of the conduct;
- (d) The applicant’s positive social contributions since the conduct; and
- (e) The reliability of the information concerning the conduct.

17

RECOMMENDED DECISION

Petitioner is properly before the Board for a determination of his request to participate in prestudent teaching field, laboratory, and classroom experiences, or student teach.

The State of Nebraska does not have a specific offense called "battery" as described in Kansas law. Nevertheless, the three misdemeanor convictions of battery for which Petitioner pled guilty and the conduct in question would fall within the scope of two Nebraska statutes, Neb. Rev. Stat. § 28-310, third degree assault, and Neb. Rev. Stat. § 28-320, third degree sexual assault, both of which are specifically enumerated offenses under Title 92 NAC, 20 § 005.07A(2). A third Nebraska statute which was more recently enacted, Neb. Rev. Stat. § 28-311.08, would also encompass some of the conduct described in the incident, but has not been placed on the list of enumerated offenses found within the above regulation.

The sentence imposed by the Kansas court of a potential of 18 months imprisonment, with probation for five years and 40 days served in jail, indicates that the sentencing judge felt that the conduct was very serious. Certainly the facts and circumstances surrounding the incident show at a minimum an extreme lack of judgment, a lack of common decency, and a callous lack of concern for the condition and well being of the victim in this case at the time the offense was committed. Likewise, it cannot be ignored that Petitioner was originally charged with a felony rape complaint, the issue of which revolves around whether or not the victim was legally and physically capable of consenting to the act and in fact did consent. Both parties hired experts who gave conflicting opinions on this issue, but it is not the purview of this hearing to resolve that conflict, especially since the Petitioner accepted a plea bargain, and pled guilty to the three misdemeanor battery charges.

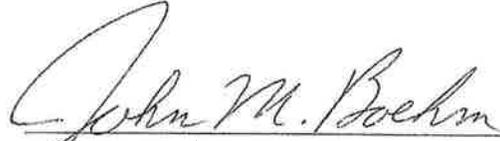
In this same regard there seems to be little question as to the reliability of the information concerning the conduct. The overall facts are largely not in dispute, other than the issue of whether or not consent was given by the victim, including whether she was capable of giving consent under the circumstances. As indicated, this is not an issue as it pertains to the three convictions for battery, to which Petitioner pled guilty.

Petitioner was 21 at the time of the incident, an age which is usually associated with the full status of adulthood. On the other hand Petitioner was still a college student and had not yet assumed the full mantle of responsibility that comes with full-time employment and other adult demands. Obviously, it is not that unusual for similarly situated 21-year olds to be subject to poor exercises of judgment, particularly where alcohol is involved. That is not an excuse, simply a recognition of the present state of society.

The Petitioner has engaged in activities evidencing positive social contributions since the conduct in question. He completed his course work at Labette Community College, he entered York College and he has completed all his required course work for graduation, needing only his student teaching activities to meet his requirements to become a teacher. During that time he participated in wrestling, and was employed dealing with troubled youth in a group home setting. He appears to have been actively involved in the religious activities within the York College community, as well as having been hired as a student assistant coach this last semester. He appears to be well thought of by faculty and his peers, and he has taken positive leadership roles and volunteered for various projects on campus, including volunteering to be a peer tutor. Other individuals who have had contact and known Petitioner over the years also believe that he is a trustworthy and reliable individual. He has a number of recommendations from his instructors as to his potential as a student teacher and eventually as a teacher. Petitioner has demonstrated a

to participate in prestudent teaching, field, laboratory and classroom experiences or student teach at this time.

Dated this 29th day of June, 2007.



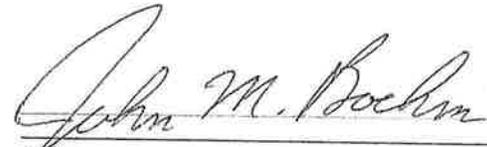
John M. Boehm, #15550
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Hearing Officer

CERTIFICATE OF SERVICE

The undersigned, John M. Boehm, hereby certifies that the original of the foregoing with attached transcript was hand delivered to Leslie Donley, Asst. Attorney General, Nebraska Department of Justice, 2115 State Capitol, Lincoln, Nebraska on June 29, 2007, and a true and correct copy of the foregoing was served by first class United States Mail, postage prepaid, on June 29, 2007, to the following parties:

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