



BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

Jeanna Pestel  
515 N. 15<sup>th</sup> Street  
Nebraska City, NE 68410

Petitioner,

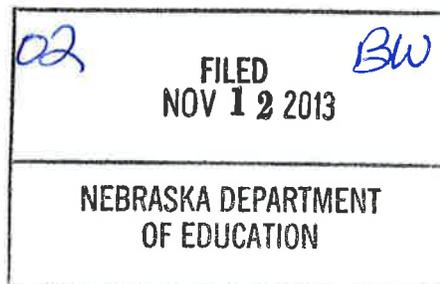
v.

Scott Swisher, Ed.D.  
Deputy Commissioner of Education  
P.O. Box 94933  
Lincoln, NE 68509

Respondent.

Case No. 13-18

ANSWER



COMES NOW the Respondent, Scott Swisher, and for his answer to the Petition of the Petitioner, admits, denies, and alleges as follows:

1. Admits Petitioner held a Nebraska Administrative Certificate which expired on August 31, 2013; admits that the Petition in this matter is being filed pursuant to Section 009.03 of Title 92, *Nebraska Administrative Code*, Chapter 21 and the provisions of Title 92, *Nebraska Administrative Code*, Chapter 61; and denies the remaining allegations contained in paragraph 1 of the Petition;
2. Denies paragraph 2 of the Petition and alleges that Section 009.03 of 92 NAC 21 provides that if the Board finds that the requirements of 92 NAC 21 and related chapters have been improperly applied to the Petitioner, then the Board may direct the Commissioner to issue a certificate to the Petitioner;
3. Admits the Petitioner filed an application for a Nebraska Administrative Certificate on August 20, 2013; that an Intent to Deny Letter, pursuant to Section 009.01 of 92 NAC 21, was sent to the Petitioner on September 13, 2013; that a written request for an administrative review by the Commissioner of Petitioner's application was received on or about October 2, 2013; and that on October 9, 2013, the Commissioner sent a letter to the Petitioner denying her application for a Nebraska Administrative Certificate. Copies of the Intent to Deny letter and the written request for an administrative review by the Commissioner are collectively attached and marked as Exhibit "A". The Respondent denies the remaining allegations contained in paragraph 3 of the Petition;
4. Admits that Exhibit A set forth in Paragraph 4 of the Petition is the denial letter sent by the Commissioner, and denies the remaining allegations in paragraph 4 of the Petition;

5. Alleges that applicants for a Nebraska Certificate are required to be of good moral character as set forth in Sections 004.011 and 005.01J of 92 NAC 21;
6. Alleges the Petitioner's contract was cancelled by the School Board of the Bellevue Public School District pursuant to the provisions of Sections 79-824 through 79-842 and that a copy of said findings pursuant to Section 79-832 were provided to the Petitioner and were included with the Intent to Deny letter which is attached as Exhibit "A"; and
7. Denies each and every allegation in the Petition not otherwise specifically denied in paragraphs 1 through 6 of this Answer.

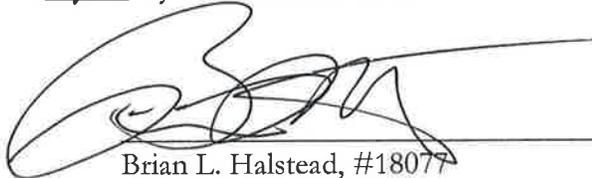
WHEREFORE, the Respondent requests that the State Board of Education appoint a hearing officer to hold a hearing on this matter, make a recommendation to the Board, and the Board take such action as may be warranted by the evidence at such hearing.



\_\_\_\_\_  
Scott Swisher, Ed.D.  
Deputy Commissioner of Education

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Answer was mailed to the parties of record through regular United States mail, postage prepaid, this 12<sup>th</sup> day of November 2013.



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



Roger D. Breed, Ed.D., Commissioner  
Scott Swisher, Ed.D., Deputy Commissioner

301 Centennial Mall South    Tel: (402) 471-2295  
PO Box 94987    Fax: (402) 471-0117  
Lincoln, NE 68509-4987    Web: www.education.ne.gov

**CERTIFIED MAIL**

September 13, 2013

Ms. Jeanna Pestel  
13505 S. 44<sup>th</sup> Street  
Bellevue, NE 68123

RE: NOTICE OF INTENT TO DENY

Dear Ms. Pestel:

This is notice of intent to deny your application filed on August 20, 2013, to renew your Nebraska administrative certificate. On June 3, 2013, you were sent a written notice of the findings and determinations of the Bellevue Board of Education based upon evidence produced at a May 21, 2013, due process hearing. A copy of the June 3 letter is enclosed.

Title 92, *Nebraska Administrative Code*, Chapter 21, Section 004.01L, requires that applicants be of good moral character. Enclosed is a copy of Section 009 of Rule 21. Section 009.02 provides that you may request within twenty (20) days a review of this decision by writing the Office of the Commissioner of Education. Contact must be made to the Commissioner's Office, not the Teacher Certification Office. To request an administrative review, you must write to:

Commissioner of Education  
P.O. Box 94933  
Lincoln, NE 68509-4987

Sincerely,

A handwritten signature in cursive script that reads "Kevin Peters".

Kevin Peters, Ed.D.  
Teacher Certification Office

Enclosures

12.06.13 State Board of Education



*To lead and support the preparation of all Nebraskans for learning, earning, and living.*



# BELLEVUE PUBLIC SCHOOLS

1600 Highway 370  
Bellevue, NE 68005-3591  
(402) 293-4000 • FAX (402) 293-5002

*"Proudly Serving the Bellevue Offiutt Community"*

[www.bellevuepublicschools.org](http://www.bellevuepublicschools.org)

June 3, 2013

Jeanna Pestel  
13505 S. 44th Street  
Bellevue, NE 68123

Dear Ms. Pestel:

The purpose of this letter is to provide you with written notice of the findings and determinations of the Bellevue Board of Education (the "Board"), based solely upon the evidence produced at the formal due process hearing conducted on May 21, 2013. This communication shall satisfy the Board's obligation to provide written notice pursuant to NEB. REV. STAT. § 79-832(3).

## Factual / Procedure Findings

For purposes of statutory and procedural formalities, the following timeline of events was confirmed as accurate and supported at the formal due process hearing by witness testimony and the designated exhibits, as applicable:

- a. Jeanna Pestel ("Pestel") was employed by Bellevue Public Schools ("BPS") as a full-time certificated employee beginning in the 2001-2002 school year and continuing until the above-referenced hearing. (Exhibits 5, 6, and 7)
- b. BPS administration witnessed several instances in which Pestel failed to punctually arrive at work. This problem persisted after BPS administration addressed the issue with Pestel and explained the importance of arriving at work on a timely basis. Pestel was thereafter instructed to use a time clock to accurately record her arrival time. The time clock records reveal several occasions on which Pestel failed to timely arrive at work. (Exhibit 9)
- c. Pestel instructed subordinate employees (via text messages and/or other forms of communication) to "clock her in" on the time clock even though she was not present at work. (Exhibit 11)
- d. BPS administration met with Pestel on April 30, 2013 to again discuss issues regarding attendance and overall performance. Pestel was instructed not to discuss the meeting with others. Despite these explicit instructions, Pestel contacted staff members in a manner expressly contrary to the instructions of BPS administration. (Exhibit 12)

- e. Based on the foregoing, the administration of BPS recommended cancellation of Pestel's contract pursuant to NEB. REV. STAT. § 79-827. (Exhibit 4)
- f. Pestel was provided written notice of such recommendation on May 1, 2013. (Exhibit 3)
- g. By letter dated May 7, 2013, Pestel made a timely written request for a hearing before the Board and Pestel was provided with a timely written notice from BPS that the requested hearing would be held on May 21, 2013. (Exhibit 2)
- h. In her communication of May 7, 2013 Pestel also requested: (1) a complete listing of all reasons that would be offered as the basis for cancellation of her contract; (2) a complete list of all witnesses who would testify on behalf of BPS; (3) a summary of what such witnesses would testify to; and (4) copies of all documents that would be presented at the hearing and used either as a basis for any witness testimony and/or identified as exhibits. (Exhibit 2)
- i. On May 14, 2013, BPS provided the information and documents requested by Pestel, to the extent required by applicable law. (Exhibit 1)
- j. The hearing on the recommended cancellation of Pestel's contract was held before the Board on May 21, 2013, and was recorded by a certified court reporter pursuant to the agreement of the parties. (Exhibit 1)

#### Determinations

The Board made the following determinations based solely on the evidence produced at the hearing.

- a. Pestel is classified as a certificated employee pursuant to NEB. REV. STAT. § 79-824(1).
- b. BPS fulfilled the procedural requirements of NEB. REV. STAT. §§ 79-827 and 79-832 for cancellation of the contract of a certificated employee by notifying Pestel in writing of the alleged grounds for cancellation and that such contract may be cancelled, and by providing proper notice of a formal due process hearing.
- c. Pursuant to NEB. REV. STAT. § 79-827(1), the contract of a certificated employee may be cancelled by a majority of the members of the school board for reasons including: (1) breach of any of the material provisions of the contract; (2) neglect of duty; (3) unprofessional conduct; and (4) insubordination.
- d. BPS presented credible evidence that Pestel breached material provisions of her contract, engaged in unprofessional conduct, and neglected her duties by establishing that after Pestel was told to report to work on time and assigned to use a time clock, she instructed subordinates to "clock her in" on the time clock system although she was not present at work or anywhere in the school district at such time. (Exhibit 11)

- e. BPS presented credible evidence that Pestal engaged in unprofessional conduct and insubordination by establishing that after Pestal was interviewed on April 30, 2013, she was instructed not to contact school staff regarding the incident, but she nonetheless contacted multiple people later that evening. (Exhibit 12)
- f. BPS presented credible evidence that Pestal breached material provisions of her contract, engaged in unprofessional conduct, and neglected her duties by establishing that she failed to regularly arrive at work on time despite explicit instructions to do so.
- g. Pestel made no objection to the admission of any evidence offered by BPS and waived all potential objections to any procedural challenges related thereto. Pestel offered no evidence that contradicted the evidence offered by BPS via Exhibits 11 and 12 and supporting witness testimony.
- h. Pestel's failure to arrive at work on time, instructing subordinates to fraudulently clock her in on the time clock system when she was not present at work or anywhere in the school district at such time, and disregarding explicit instructions from BPS administration regarding confidentiality of an investigation, present legitimate grounds for termination of her contract for (1) breach of the material provisions of her contract; (2) neglect of duty; (3) unprofessional conduct; and (4) insubordination pursuant to NEB. REV. STAT. § 79-827(1).
- i. Following the Board's return from closed session, a motion was made and carried to accept BPS' recommendation of cancellation of Pestel's contract, based solely upon the evidence produced at the hearing.

This communication satisfies the Board's obligation to provide written notice pursuant to NEB. REV. STAT. § 79-832(3). Should you have any questions regarding these proceedings, please contact the Board or your legal counsel.

Bellevue Public Schools Board of Education

By: Frank Rumor

Jeanna Marie Pestel  
515 N. 15<sup>th</sup> Street  
Nebraska City, Nebraska  
(402) 312-4253



October 1, 2013

**VIA FAX: (402) 471-2013**

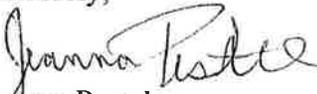
COMMISSIONER OF EDUCATION  
PO BOX 94933  
Lincoln, NE 68509- 4987

RE: Request for Administrative Review

Dear Commissioner,

I was provided with a copy of a letter dated September 13, 2013 from Kevin Peters, Teacher Certificate Office, placing me on notice that the Department of Education intends to deny my application to renew my Nebraska administrative certificate. Recently I have received a letter from Scott Swisher, Deputy Commissioner of Education, that indicates that as of September 3, 2013, Mr. Swisher maintained that I no longer held a valid educator certificate. This letter shall serve as my request for an administrative review of any decision to deny my application for the renewal of my administrative certificate as is my right under Section 009.02 or Rule 21 I applied for renewal and paid the application fee on or about August 20, 2013. I would like to the opportunity to address this issue with you or your representative personally.

Sincerely,

  
Jeanna Pestel

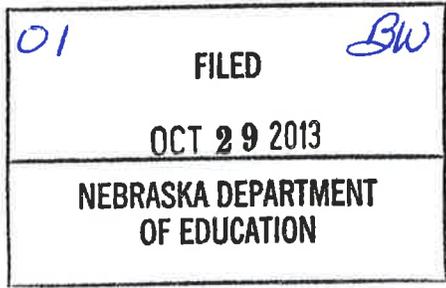
**BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA**

JEANNA PESTEL )  
515 N. 15<sup>th</sup> St. )  
Nebraska City, NE 68410, )  
 )  
Petitioner, )

Case No. 13-18

v. )  
 )  
ROGER D. BREED, Ed.D., Commissioner )  
Nebraska State Board of Education )  
301 Centennial Mall South )  
P.O. Box 94987 )  
Lincoln, NE 68509-4987, )  
 )  
Respondent. )

**PETITION**



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

1. Petitioner Jeanna Pestel has held a certificate as an administrator pursuant to Neb. Rev. Stat. §79-801 et seq., allowing her both to teach and administer in the State of Nebraska. This Petition is filed pursuant to 92 NAC 21-009.03. Petitioner has a legal right to continued certification as a teacher and administrator, pursuant to Neb. Rev. Stat. §79-808. A determination has been made by Respondent to decline the renewal of said certificate, and Petitioner seeks a review and reversal of that determination.

2. Petitioner requests that the Board of Education determine whether Petitioner's certificate to teach and/or administer in the State of Nebraska should be renewed based upon her application for said renewal.

3. Petitioner states that she was first granted a Teaching certificate in 2001 and that she was granted an Administrator certificate in 2006. From 2001 through May 21, 2013, she was employed as an educator by the Bellevue Public Schools as a classroom teacher, a lead teacher

and since 2007, as the Principal of Belleaire Elementary School. Prior to May 21, 2013, she had not been disciplined by any employer as an educator and she performed in a satisfactory or above satisfactory manner. Petitioner was terminated from Bellevue Public Schools on or about May 21, 2013 after a public hearing. Petitioner did not appeal the written order of the Board of Education for the Bellevue Public Schools but rather sought and obtained a position as a teacher in the Nebraska City Public School System. Petitioner applied for the renewal of her certificate on August 20, 2013 and paid the required fees associated with said filing. On September 13, 2013, Petitioner received notice that the Department of Education intended to not renew her educator's certificate. The communication received by Petitioner from the Department of Education cited both the written decision of the Bellevue Board of Education and provisions of the Nebraska Administrative code indicating that applicants for certificates be of "good moral character." Petitioner's professional and personal experience, history and body of work demonstrate that she is in possession of sufficient "good moral character" to entitle her to the maintenance of her educator's certificate. Further, the decision to terminate her employment contract taken by the Bellevue Board of Education does not constitute evidence of a demonstration that Petitioner lacks "good moral character" sufficient to deny her application to renew her Nebraska educator's certificate.

4. Attached hereto, marked as Exhibit "A," and incorporated by reference as if fully set forth herein is a true and accurate copy of the determination letter signed by Mr. Scott Swisher, Ed.D., Deputy Commissioner of Education. That letter is dated October 9, 2013, and it is that determination which Petitioner seeks to have a determination made by the Nebraska Board of Education. Petitioner seeks an order or other directive from the Board of Education reversing the denial of her application for renewal of her Nebraska educator's certificate and for such further or other relief deemed just by the Nebraska Board of Education in the premises that

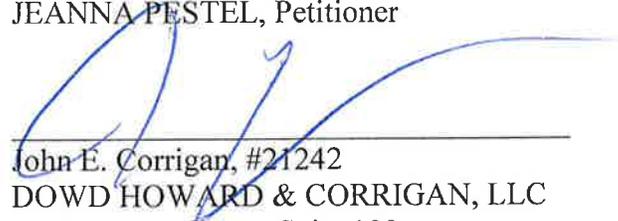
allows Petitioner to obtain the renewal of her certificate so that she can continue in her professional capacity as a certified teacher in the State of Nebraska for the reasons set forth herein and for those reasons which will be further developed at the time of a full and fair hearing on the matter.

WHEREFORE, Petitioner requests that the Board of Education direct that a hearing on this Petition be held and that upon the consideration of evidence, that the Board grant Petitioner's application for the renewal of her Nebraska educator's certificate or in the alternative, that the Board grant Petitioner's application for the renewal of her Nebraska educator's certificate under such conditions as the Board may deem just and appropriate such that Petitioner will be allowed to return to her profession as a certified teacher, and for such further relief as may be deemed necessary and just.

DATED this 28<sup>th</sup> day of October, 2013.

JEANNA PESTEL, Petitioner

By:

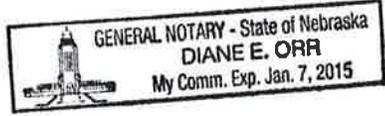
  
\_\_\_\_\_  
John E. Corrigan, #21242  
DOWD HOWARD & CORRIGAN, LLC  
1411 Harney Street, Suite 100  
Omaha, Nebraska 68102  
(402) 341-1020  
ATTORNEYS FOR PETITIONER

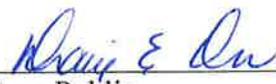
STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

I, Jeanna Pestel, being first duly sworn on oath, state that I have read the contents of the foregoing 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.

  
\_\_\_\_\_  
Jeanna Pestel

SUBSCRIBED AND SWORN TO before me on this 28<sup>th</sup> day of October, 2013.



  
\_\_\_\_\_  
Notary Public



**Roger D. Breed, Ed.D., Commissioner**  
**Scott Swisher, Ed.D., Deputy Commissioner**

301 Centennial Mall South    Tel: (402) 471-2295  
PO Box 94987    Fax: (402) 471-0117  
Lincoln, NE 68509-4987    Web: www.education.ne.gov

**Certified Mail**

October 9, 2013

Ms. Jeanna Pestel  
515 N. 15<sup>th</sup> Street  
Nebraska City, NE 68410

RE: Application to Renew Your Nebraska Administrative Certificate

Dear Ms. Pestel:

On August 20, 2013, you filed an application to renew your Nebraska administrative certificate. On September 13, the Director of the Teacher Certification Office sent you a letter notifying you of an Intent to Deny your application for the reason that on June 3 a written notice of findings and determinations of the Bellevue Board of Education were sent to you following a hearing held on May 21 to cancel your contract. On October 1 this office received a letter from you requesting my review of your application.

Pursuant to Neb. Rev. Stat. Section 79-808 and Title 92, *Nebraska Administrative Code*, Chapter 21, it is my responsibility to consider your moral fitness for issuance of a Nebraska certificate.

In reviewing the information surrounding your application and the transcript of the hearing before the Bellevue Board of Education on May 21, 2013, I have determined the following: 1) During the 2012-2013 school year, you were an elementary principal for the Bellevue Public Schools and failed to punctually arrive at work for which you were required to use a time clock to indicate your arrival at work; 2) The Bellevue Board of Education held a hearing on May 21, 2013, regarding cancellation of your contract; 3) Testimony by Superintendent Howard at the hearing indicated that you lied to him and another administrator when questioned about your being at work; 4) You admitted in your testimony at the hearing to lying to the superintendent and another administrator about your whereabouts; 5) You admitted to instructing subordinates to fraudulently clock you in on the time clock system when you were not present at work or anywhere in the school district; 6) The Bellevue Board of Education determined after the hearing on May 21, 2013, to cancel your contract; 7) The written findings and determination of the Bellevue Board of Education were sent to you on June 3, 2013; 8) You did not appeal the decision of the Bellevue Board of Education pursuant to the provisions of Section 79-833; 9) The State Board of Education has on numerous occasions revoked the certificate of an educator for cases involving fraud and determining said educators engaged in immoral conduct; and 10) Your conduct does not meet the requirement of good moral character.



Ms. Jeanna Pestel  
October 9, 2013  
Page 2

Therefore, I am denying your application for a Nebraska administrative certificate for failure to meet the requirements of Section 79-808 and Title 92, *Nebraska Administrative Code*, Chapter 21, Section 004.01. Section 009.04 of 92 NAC 21 provides that you may appeal my denial of your application to the State Board of Education within twenty (20) calendar days of receipt of this letter. A copy of 92 NAC 61 is included.

Respectfully,

A handwritten signature in cursive script, appearing to read "Scott Swisher".

Scott Swisher, Ed.D.  
Deputy Commissioner of Education

xc: Kevin Peters, Ed.D.  
John Corrigan, Attorney at Law