

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

Matthew L. Blomstedt, Ph.D. )  
Commissioner of Education )  
P.O. Box 94933 )  
Lincoln, NE 68509-4933, )

Petitioner, )

v. )

Daniel Johnston )  
1002 E. Cary Street )  
Papillion, NE 68046, )

Respondent. )

NDE Case No. 23-01

**FINAL ORDER**

This matter came before the State Board of Education ("State Board"), Lincoln, Nebraska, on May 8, 2023, upon the recommendation of the Nebraska Professional Practices Commission ("NPPC") that the teaching certificate of Respondent, Daniel Johnston, be permanently revoked. The parties were notified of the State Board's consideration in this matter. Appearing before the State Board was Tamra L. Walz, General Counsel, on behalf of the Commissioner of Education. NPPC Clerk Kelly Muthersbaugh appeared and provided a summary of the NPPC's recommendation in this matter. The Respondent did not appear.

The record of the NPPC proceeding, containing the "Findings of Fact, Conclusions of Law, and Recommendation of the Commission," and all of the pleadings, exhibits, and a written transcript of the NPPC hearing, was received by the State Board into evidence as "Exhibit 1." The Notice of Disposition and the certified mail tracking information were received into evidence as "Exhibit 2." Upon its independent review of the entire record, the State Board finds, concludes, and orders as follows:

1. The State Board has jurisdiction in this case pursuant to Neb. Rev. Stat. § 79-866(2) (2014);

2. The Petitioner is Matthew L. Blomstedt, Ph.D., Commissioner of Education, P.O. Box 94933, Lincoln, NE 68509-4933;

3. The Respondent is Daniel Johnston, 1002 E. Cary Street, Papillion, NE 68046;

4. The Respondent holds a public Nebraska Standard teaching certificate number 2018003736, endorsed in Work-Based Learning 9-12 and Business, Marketing, & Information Technology 7-12, with an expiration date of August 31, 2023;

5. The Respondent was employed as a teacher and coach by the Papillion La Vista Community Schools ("PLV") beginning with the 2015-2016 school year;

6. On or about October 5, 2020, PLV administrators were notified of concerns that the Respondent was communicating with a student he had coached (hereinafter, "M.V.") via text messaging. The Respondent's conduct also included smoking an unknown substance with M.V., which he provided.

7. School administration met with Respondent on October 6, 2020, to discuss the allegations and instructed Respondent to have no contact with M.V. Administrators further informed Respondent that it was a violation of school policy to text students individually about personal issues. Following the meeting, Respondent immediately texted M.V. inquiring as to what she would have told the adults before he answered further questions.

8. During interviews with M.V., conducted by school administration and law enforcement, M.V. disclosed that she and Respondent had smoked marijuana together

on five to ten occasions in the fall of 2020, that Respondent had provided the marijuana, and that he taught her “how to roll a joint so [she] would know how to do it once [she] got to college.” When interviewed about this, Respondent denied using marijuana with M.V., claiming he had only smoked CBD oil from an electronic pen with M.V. Respondent acknowledged he does smoke marijuana and has both CBD and marijuana cartridges.

9. The Papillion Police Department conducted a criminal investigation and discovered approximately 62,000 text messages between Respondent and M.V., which included multiple affirmations of love and emotional closeness, arguments with explicit language, and references to smoking. The text messages reflected a close personal relationship between Respondent and M.V. The police department further determined that Respondent’s actions with respect to smoking CBD oil did not constitute a crime;

10. On or about October 9, 2020, the PLV superintendent provided written notification to the Respondent of possible contract cancellation. On November 17, 2020, the Respondent signed a resignation agreement which was approved by the PLV school board at its November 23, 2020, meeting;

11. The Respondent has violated Neb. Rev. Stat. § 79-866(2) (2014), which states, in part: “The board may, for just cause, revoke or suspend any teacher’s or administrator’s certificate. Violation of the standards established pursuant to this section, commission of an immoral act, or conviction of a felony under the laws of this state shall constitute just cause for the revocation or suspension of a teacher’s or administrator’s certificate by the board”; Title 92, *Nebraska Administrative Code*, Chapter 27, Section 004.02E (effective date: November 12, 2003) (“the educator: Shall not exploit professional relationships with students, colleagues, parents, school patrons, or school

board members for personal gain or private advantage”); Section 004.03C (same effective date) (“the educator: Shall make reasonable effort to protect the student from conditions which interfere with the learning process or are harmful to health or safety”); Section 004.03D (same effective date) (“the educator: Shall conduct professional educational activities in accordance with sound educational practices that are in the best interest of the student”); Section 005.02B2 (same effective date) (“Each teacher . . . shall: Adhere to and enforce written and dated administrative policy of the school which has been communicated to the teacher or special services provider”); Section 005.04A1 (same effective date) (“Each educator shall. . . Create an atmosphere which fosters interest and enthusiasm for learning and teaching”); and Section 005.06D (same effective date) (“The educator shall: Develop and maintain positive standards of conduct”);

12. By a preponderance of the evidence, just cause exists pursuant to Neb. Rev. Stat. § 79-866(2) (2014) to permanently revoke the Respondent’s teaching certificate; and

13. The public Nebraska Standard teaching of Daniel Johnston, certificate number 2018003736, endorsed in Work-Based Learning 9-12 and Business, Marketing, & Information Technology 7-12, with an expiration date of August 31, 2023, shall be permanently revoked from and after the date of this order.

Dated this 8<sup>th</sup> day of May, 2023.

STATE BOARD OF EDUCATION

BY:



Patti Gubbels, President

The vote by the State Board of Education to approve the Final Order in Case No. 23-01, on May 8, 2023, was 6 in favor, \_\_\_\_\_ against, \_\_\_\_\_ abstaining, and 2 absent. Individual State Board members voted as follows:

IN FAVOR: P. Gubbels, P. Koch Johns, S. Jones, L Fricke, E. Tegtmeier, K. Penner

AGAINST: \_\_\_\_\_

ABSTAINING: \_\_\_\_\_

ABSENT: D. Neary, J. Morrison

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon the Respondent, Daniel Johnston, 1002 E. Cary Street, Papillion, NE 68046, by regular U.S. Mail; Kelly Muthersbaugh, NPPC Clerk, 301 Centennial Mall South, Lower Level, Lincoln, NE 68509, by interoffice mail; and Tamra L. Walz, General Counsel, Nebraska Department of Education, 500 S. 84th Street, 2nd Floor, Lincoln, NE 68510-2611, by interoffice mail, all on this 10<sup>th</sup> day of May, 2023.

*Lois B. Sympel*