

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Matthew L. Blomstedt, Ph.D.)
Commissioner of Education)
500 S. 84th Street, 2nd Floor)
P.O. Box 94933)
Lincoln, NE 68509-4933,)

Petitioner,)

v.)

Daniel Maline)
23713 Oak Street)
Waterloo, NE 68069,)

Respondent.)

NDE Case No. 23-23

FINAL ORDER

This matter came before the State Board of Education (“State Board”), Lincoln, Nebraska, on November 6, 2023, upon the recommendation of the Nebraska Professional Practices Commission (NPPC) that the public Nebraska Standard teaching certificate of Respondent, Daniel Maline, be revoked for a period of three years. 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. Attorney Nicholas Welding appeared on behalf of Respondent. NPPC Clerk Kelly Muthersbaugh appeared and provided a summary of the NPPC’s recommendation.

The record of the NPPC proceeding, containing the “Findings of Fact, Conclusions of Law, and Recommendation of the Commission” (Recommendation), and all of the pleadings, exhibits, and a written transcript of the NPPC hearing, were received by the State Board into evidence as “Exhibit 1.” The Notice of Disposition and the transmittal email to the parties and NPPC were received into evidence as “Exhibit 2.”

Procedurally, the State Board had previously considered this matter on September 27, 2023, when it convened to hear and consider the arguments presented by legal counsel and the NPPC's recommendation. However, following the hearing, the State Board was advised by its legal counsel that the record in the case was incomplete, thereby necessitating the State Board to reconvene on November 6. The State Board, having now considered the entire record, 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.,¹ Commissioner of Education, P.O. Box 94933, Lincoln, NE 68509-4933.

3. The Respondent is Daniel Maline, 23713 Oak Street, Waterloo, NE 68069.

4. The Respondent holds a public Nebraska Standard teaching certificate number 2019005760, endorsed in Elementary Education K-6, with an expiration date of August 31, 2024.

5. The Respondent was employed as a teacher and coach by the Douglas County West Community School District (DC West) beginning with the 2014-2015 school year.

6. During the 2020-2021 and 2021-2022 school years, the Respondent engaged in non-educational communication with a current student, which included exchanging text messages. See Exhibit 1, ex. 4. Conversations between Respondent and the student were personal in nature, with topics such as the student's relationship with her father and his then-girlfriend, and the student's mental health, physical

¹ Dr. Blomstedt resigned as commissioner effective January 3, 2023. Dr. Brian L. Maher subsequently assumed the position of Commissioner of Education on July 1, 2023.

appearance and boyfriends. The text messages were sent outside of school hours, sometimes exchanged late in the evening/night. Some texts contained profanity. Photos were also exchanged in the text messages.

7. While Exhibit 1, ex. 4 contains 58 pages of text messages exchanged between the Respondent and the student, the student's father testified during the NPPC hearing held on June 14, 2023, that "there was thousands of text messages," and the ones in the exhibit "highlighted areas of concern, but the relationship-building was way beyond these." Exhibit 1, Tr. at 26.

8. At his suggestion, the Respondent and student co-authored a fantasy story using the school district's Google Drive. The story was non-educational in nature and contained references to murder, dismemberment, decapitation, illicit drugs, and stealing, among other topics. See Exhibit 1, ex. 5.

9. The Respondent failed to properly report any of the student's mental health concerns directly communicated to him in accordance with the mandatory reporting requirements in Neb. Rev. Stat. § 28-711, believing that referrals to administration or the student resource officer were sufficient. See Exhibit 1, Tr. at 144-48; ex. 4 at 27.

10. On April 12, 2022, the Respondent was notified of possible cancellation of his contract due to the conduct described in ¶¶ 6-9 above. On April 26, 2022, the Respondent entered into a resignation agreement with DC West, which was accepted by the DC West School Board at its meeting on May 2, 2022.

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." The Respondent has also violated the following provisions in Nebraska Department of Education, Title 92, *Nebraska Administrative Code*, Chapter 27, "Regulations and Standards for Professional Practices Criteria" (effective date: November 12, 2003): Section 004.02E ("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 ("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 ("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 ("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 ("Each educator shall: Create an atmosphere which fosters interest and enthusiasm for learning and teaching"); and Section 005.06D ("The educator shall: Develop and maintain positive standards of conduct").

12. The NPPC Recommendation in this matter stated, in part, that all members of the [NPPC] who considered the evidence, found that Respondent's actions in communicating with the student/athlete in question, including both texts and compiling a Google doc fantasy story, were excessive, personal in nature, and crossed ethical boundaries to a significant and concerning degree. Despite Respondent's stated concern for the student's mental health as a motivating factor

in this communication, there was no evidence that he communicated such concerns in writing to a school administrator, qualified mental health professional, or to her parent.

13. The State Board fully concurs with the NPPC that the Respondent “*crossed ethical boundaries to a significant and concerning degree.*” The State Board finds, however, that the three-year revocation recommended by the NPPC is insufficient in light of the record before it.


14. The facts surrounding Respondent’s conduct are largely undisputed. Based on the totality of Respondent’s conduct, including the extensive number of text messages exchanged with the student, the attempts to alienate the student from family members and male classmates, the failure to fully adhere to mandatory reporting requirements when situations arose, co-authoring an inappropriate “fantasy” story with the student containing numerous disturbing subjects on the school district’s system, and the resulting deleterious effects on the student involved, the State Board finds that a different and more severe sanction is warranted.

15. By a preponderance of the evidence, the State Board finds that just cause exists pursuant to Neb. Rev. Stat. § 79-866(2) (2014) to permanently revoke the Respondent’s certificate.

16. Therefore, the Nebraska Standard teaching certificate of Daniel Maline, number 2019005760, endorsed in Elementary Education K-6, with an expiration date of August 31, 2024, shall be permanently revoked from and after the date of this order.

Dated this 9th day of November, 2023.

STATE BOARD OF EDUCATION

BY: 
Dr. Patti Gubbels, President

The vote by the State Board of Education to approve the Final Order in Case No. 23-23, on November 6, 2023, was 4 in favor, 3 against, abstaining, and 1 absent. Individual State Board members voted as follows:

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

AGAINST: D. Neary, L. Fricke, P. Gubbels

ABSTAINING: _____

ABSENT: J. Morrison

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon counsel for the Respondent, Nicholas Welding, Norby & Welding, LLP, 605 South 14th Street, Suite 220, Lincoln, NE 68508, 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 9th day of November, 2023.

A handwritten signature in blue ink, reading "Sara B. Sykes", is written over a horizontal line.

49-3385-30