

**IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 354)**

In re Roy Metzger :

Davis County Community
School District, Complainant, :

v. : DECISION

Roy Metzger,
Respondent. :

[Admin. Doc. #3900]

This case was heard on August 6, 1997, before a hearing panel comprising Dr. Gary Borlaug, Bureau of Practitioner Preparation & Licensure, Mr. Don Wederquist, Bureau of Community Colleges & Workforce Development; and Amy Christensen, J.D., designated administrative law judge, presiding. The Complainant, Davis County Community School District (hereinafter, the District), was present in the person of Dr. Arvid Goettsche, Superintendent, and was represented by Ms. Elizabeth Grob. Ms. Grob is with the Ahlers Law Firm, as was the previous attorney of record, Mr. Peter Pashler. The Respondent, Mr. Roy Metzger, was not present at the hearing and was not represented by counsel.

After determining that proper service of the Notice of Hearing was made, and attempting to call Mr. Metzger at his home, the hearing proceeded in his absence. An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code (IAC) Ch. 6. Authority and jurisdiction for this appeal are found at Iowa Code 321.375 and 376(1997), and at 281 IAC 43.24. The administrative law judge finds that she and the Director of the State Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

The District filed a Complaint with the Department of Education pursuant to 281 IAC 43.12 and 43.24 regarding a former bus driver for the District. The Complainant seeks permanent revocation of the Respondent's school bus driving permit.

I. FINDINGS OF FACT

Notice of Hearing was sent to the Respondent, Mr. Metzger, by certified mail, return receipt requested. The Department of Education has the return receipt card signed by Evelyn Metzger. Mr. Metzger was properly served with the Notice of Hearing. Since Mr. Metzger was not present at the hearing, the following facts are undisputed.

Mr. Metzger was employed by the District as a bus driver until April 23, 1997. On April 17, 1997, Mr. Metzger was the driver on a bus ridden by a 13 or 14-year-old student. Mr. Metzger overheard the student say she would be babysitting. From this conversation, he knew she would be alone with the children she was babysitting.

After completing his driving duties for the District, Mr. Metzger called the student at the home where she was sitting, and told her he was coming over to see her. The student's telephone had call waiting. The student was on the other line with her mother when Mr. Metzger called, so immediately after Mr. Metzger hung up, the student told her mother what he had said. She also talked with her father who was home. The father called the Transportation Director at school. He then went immediately to the house where the student was babysitting. The Transportation Director called the sheriff, and both also went to the house. They found Mr. Metzger at the door of the house. He had not entered the house yet. The student and the other children were inside the house with the lights out, hoping he wasn't going to force himself into the house.

Mr. Metzger was arrested and charged with criminal trespass. Mr. Metzger pled guilty to this charge and was fined. A protective order was also issued against Mr. Metzger to prevent him from having any contact with the student.

Mr. Metzger submitted his resignation as a bus driver to the District on April 23, 1997, effective immediately.

Dr. Goettsche visited with Mr. Metzger, and Mr. Metzger told him he has a problem, he and his wife were working through it, and he was going to get some help. Dr. Goettsche does not know exactly what this meant, but assumed Mr. Metzger meant he had had problems with his wife over incidents similar to this in the past, and he needed to get professional help.

After this incident, the District found out there had been some prior complaints against Mr. Metzger. At one time, he had made a statement to a girl that she was really good looking and that he would like to have her sit on his lap. As far as Dr. Goettsche knows, there have been no prior incidents where Mr. Metzger went to a student's house such as in this case.

II. CONCLUSIONS OF LAW

The Respondent, Mr. Metzger, was properly served with the Notice of Hearing. He did not appear at the hearing, did not send a representative, and did not request a continuance. Pursuant to Iowa Code section 17A.12(3)(1997), the hearing was held and a decision reached in his absence.

School bus drivers must hold a valid driver's license issued by the department of transportation, and a school bus driver's permit issued by the department of education. Iowa Code 321.376(1997). This section provides that the department of education must revoke a bus permit if the driver committed any of the acts listed in Iowa Code section 321.375(2)(1997). The department must also promulgate rules for the revocation of bus permits. Those rules must include, but are not limited to, provisions for the revocation of permits for persons who commit acts listed in sec. 321.375(2)(1997).

Iowa Code section 321.375(2)(1997) lists the following acts: a) use of nonprescription drugs or alcohol during working hours; b) operating a school bus while under the influence; c) fraud in obtaining the bus permit; or d) "The commission of or conviction for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or if the offense includes sexual involvement with a minor student with the intent to commit acts and practices proscribed under sections 709.2 through 709.4, section 709.8, and sections 725.1 through 725.3, or is a violation of the rules of the department of education adopted to implement section 280.17".

None of the first three is alleged to have been committed by Mr. Metzger. The District alleges that his conviction for trespass falls under subsection (d). However, the conviction for trespass is not relevant to driving ability, and did not involve sexual involvement with a minor student with the intent to commit the listed sexual abuse or prostitution acts. It also was not a violation of the department's child abuse rules. Luckily, the quick actions of the parents and the District prevented Mr. Metzger from getting any closer to the student than the door of the home where she was babysitting. Therefore, while Mr. Metzger may have committed acts which would have violated at least one of the listed sections if he had made it into the house, he had not yet entered the house. Therefore, there are no grounds for revoking his bus permit under Iowa Code section 321.375(2)(1997).

However, the Department has promulgated rules for the revocation of bus permits, and pursuant to Iowa Code section 321.376, those rules are not limited to the actions listed in 321.375(2). The department may revoke a bus permit if the driver committed acts in violation of rule 43.12. 281 IAC 43.24. Rule 43.12 provides that "General character and emotional stability are qualities which must be given careful consideration by boards of education in the selection of school bus drivers. Elements that should be

considered in setting a character standard are: 1. Reliability or dependability . . . 6. Moral conduct above reproach." Iowa Code section 321.375(1) also states that school bus drivers must meet a number of requirements, one of which is "c. Not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported."

Clearly, Mr. Metzger's actions violated rule 43.12. He has shown himself to be emotionally unstable and not of good character in a way which was emotionally harmful, and which was potentially much more emotionally and physically harmful to this student. It was only through the quick thinking and acting of the student herself, her parents, and District employees which prevented this much greater harm. The District, students, and parents must be able to depend on the fact that their school bus driver will not invite himself over to visit a student who is babysitting. Although Mr. Metzger got no further than the door, his conduct was immoral. It was predatory. It was frightening to the student. It is without doubt ground for revocation of his school bus permit. 281 IAC 43.24; 281 IAC 43.12; Iowa Code sections 321.375 and 376(1997); *In re Phil E. Stout*, 10 D o E. App. Dec. 213(1993).

The District asked that Mr. Metzger's bus permit be permanently revoked. We agree that that is appropriate. Mr. Metzger told the Superintendent that he has a problem and needs help. There was at least one other complaint from a student regarding Mr. Metzger. His action with regard to this student was egregious, and the only reason more serious harm did not occur was because others' actions prevented it. It is best for Mr. Metzger and students that he never be in the situation of driving a school bus again.

III. DECISION

For the foregoing reasons, the school bus driving permit held by Mr. Roy Metzger is hereby permanently revoked.

August 29, 1997
DATE

Amy Christensen
AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

9/2/97
DATE

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TED STILWILL, DIRECTOR
STATE DEPARTMENT OF EDUCATION