

**Iowa State Board  
of Education**

(Cite as 10 D.O.E. App. Dec. 213)

In re Philip E. Stout

Highland Community School  
District and Iowa  
Department of Education,  
Complainants,

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:  
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v.

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DECISION

Philip E. Stout,  
Respondent.

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[Permit No. 7609]

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The above-captioned matter was heard on October 15, 1992, before a hearing panel assembled on behalf of the State Board of Education, comprising Colleen McClanahan, consultant, Office of Educational Services for Children, Families & Communities; Jim Tyson, consultant, Bureau of School Administration and Accreditation; and Kathy L. Collins, legal consultant and designated administrative law judge, presiding. The Department of Education, as Complainant, was present in the person of Terry Voy, consultant for school transportation matters in the Bureau of Administration and Accreditation, not represented by counsel. Also present and unrepresented by counsel was Secondary Principal Terry Bowton of Highland Community School District. Respondent Philip E. Stout was not present in person nor represented; however he acknowledged receipt of notice of hearing by certified mail by his signature on the return receipt. Pursuant to departmental rules, after service of proper notice the hearing may be conducted despite Respondent's failure to appear. Respondent was also advised of this fact in the notice.

The school district and department's complaint against Respondent Mr. Stout stemmed from a founded report that Respondent had engaged in inappropriate, intentional sexual behavior toward a student in his charge while he was employed as a substitute school bus driver for the Highland Community School District. Complainants seek permanent revocation of Respondent's school bus driving permit in Iowa. Jurisdiction and authority for the appeal are found at Iowa Code section 321.375 and departmental rules found at 281 Iowa Administrative Code 43.24. The hearing was conducted in accordance with departmental rules at 281 Iowa Administrative Code 6.

I.  
**Findings of Fact**

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the instant case. In addition, I specifically find that Respondent Philip Stout received proper timely notice of hearing.

In January of 1992, teacher and advisor Patricia Leslie-Sackett related to secondary principal and designated investigator Terry Bowton Ms. Sackett's belief that a fourteen year-old female student had been "molested" by thirty year-old substitute school bus driver, Philip Stout. Ms. Sackett completed a reporting form for initiating an investigation into an allegation of abuse of a student by a school employee. The allegation was that the driver (Respondent) "put his hand on [the female student's] buttocks" and that similar behavior had occurred previously:

Same driver has placed his hand on her leg just above the knee on more than one occasion. This bothers [the student] and makes her uncomfortable. She has had to pull his hand off and even scratched him. [The student] said she is afraid of him. This has also happened to [another female student on the same bus route].

Exhibit 1 ("Report of Injury or Abuse of a Student")

Pursuant to state law (Iowa Code §280.17), rules (281 IAC 102), local board policy and procedures, Mr. Bowton conducted a level one investigation interviewing the alleged victim, one witness, and Respondent. Mr. Bowton concluded as a result of these interviews that the allegation of sexual abuse was founded. He then turned the investigation over to Mr. Jerald Smithey, private investigator, who is the Highland School District's level two investigator. Mr. Smithey's narrative report also concluded that it was likely the incident occurred as alleged and that Respondent's conduct constituted an "intentional sexual behavior by the school employee" directed toward a student.<sup>1</sup>

On March 12, 1992, Mr. Stout was notified that his employment as a substitute bus driver was terminated by the board. His mother, the regular bus driver for the route, was notified not to use him as a substitute.

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<sup>1</sup>Respondent acknowledged squeezing the complaining student's leg on prior occasions but characterized it as "discipline" rather than sexual misconduct. He denied touching her buttocks.

At hearing, Mr. Bowton testified that in the course of Respondent's employment with the school district, other complaints had been lodged against him but none relating to student abuse.<sup>2</sup> The termination of his employment was based on Respondent's record as a whole, not the most recent incident.

Respondent has not applied for nor been issued a bus driver permit since the 1991-92 school year when this incident occurred.

## II. Conclusions of Law

Iowa law provides that:

The driver of a school bus shall hold a bus driver's permit issued annually by the department of education and a driver's license issued by the department of transportation valid for the operation of the school bus. . . . The department of education shall revoke or refuse to issue a permit to any person who, after notice and opportunity for hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2.

Iowa Code §321.376(1) (1993). The referenced provision states as follows:

Any of the following shall constitute grounds for a school bus driver's immediate suspension from duties, pending a termination hearing by the board . . . :

- a. Use of nonprescription controlled substances or alcoholic beverages during working hours.
- b. Operating a school bus while under the influence of nonprescription controlled substances or alcoholic beverages.
- c. Fraud in the procurement or renewal of a school bus driver's permit.
- 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.

Iowa Code §321.375(2) (1993).

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<sup>2</sup>For example, there was at least one complaint that Respondent drove in excess of the speed limit on gravel roads. Another involved his sending flowers to a 13 or 14 year-old student and encouraging a romantic relationship with her.

This agency was given rulemaking authority to implement those Code provisions. In response, the State Board of Education adopted the following provision:

A person who believes that a school bus driver who holds a permit issued by the department of education or who seeks a school bus permit has committed acts in violation of Iowa Code subsection 321.375(2) or rule 43.12(285) may file a complaint with the department against the permit holder or applicant. The department shall notify the permit holder or applicant that a complaint has been filed and shall provide a copy of the complaint to the driver. A hearing shall be set for the purpose of determining whether the bus driver's permit shall be denied or revoked. Hearing procedures in 281--6 shall be applicable to permit revocation or denial proceedings.

281 IAC 43.24(321). The reference in the above-quoted section to rule 43.12 ("Bus Driver Qualifications") is applicable in this case. That provision reads in pertinent part:

**Driver Qualifications.** General character and emotional stability are qualities which must be given careful consideration by [school boards] in the selection of school bus drivers. Elements that should be considered in setting a character standard are . . . 6. Moral conduct above reproach.

281 IAC 43.12.

On this basis, the complaint in this case was initiated by Mr. Terry Bowton, level one investigator and secondary principal as Highland Community School District. Mr. Terry Voy, D.E. consultant in charge of transportation issues including bus driver permits, brought the case before the hearing panel and recommended revocation of Mr. Stout's 1991-92 permit along with a recommendation that Mr. Stout not be issued an Iowa school bus driver's permit at any time in the future.

This is the first opportunity the State Board of Education has had to rule on the provision of section 321.376 allowing it to revoke or refuse to issue a school bus driver's permit for inappropriate or criminal conduct.

We presume the amendment to the Code was enacted to protect the public, particularly the school children of Iowa who daily come into contact with school bus drivers. We know that the intent of the D.E. rule is to assure, to the extent possible, that the conduct of the school bus drivers of Iowa is above reproach. These new provisions of law fill a gap that existed previously; specifically, the Code required that relevant illegal or immoral conduct by a school bus driver be dealt with

severely (suspension pending termination of the yearly contract) by the employing school board. That action would suffice to remove the offending driver from service in that school district, but there was no reporting mechanism at the state level to assure that the offending driver would not simply move on to another school district, one perhaps that was lax in its responsibility to check prior work history and references. We believe the statutory amendment gave this agency the right to decide if certain behavior, which was a proper ground for termination of the employment relationship, would also merit a revocation of that person's permit or his opportunity to be issued a permit in the future.

In this case, Mr. Bowton and Mr. Voy both pressed for the permanent loss of Respondent's qualified privilege to drive a school bus in Iowa, should he ever reapply for a permit. We have no precedent to review, so the question is whether the touching of a female adolescent student's buttocks (unrefuted before the panel) and the squeezing of her thigh is sufficiently immoral conduct to justify the permanent denial of the opportunity to drive a school bus in Iowa. Had Respondent appeared and urged this panel to recommend otherwise, or had he credibly testified that the events alleged did not occur, the panel might have been reluctant to impose a life-long revocation. As it is, however, we must assume the allegation to be true. We choose not to take the chance of allowing Respondent to continue this egregious behavior endangering the health (mental and physical) and safety of Iowa's students.

### III. Decision

For the foregoing reasons, it is recommended that the State Board of Education permanently revoke Philip E. Stout's privilege of holding a school bus driver permit in Iowa, denying any future application on the ground of moral unfitness.

June 7, 1993  
DATE

Kathy L. Collins  
KATHY L. COLLINS, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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RON MCGAUVVRAN, PRESIDENT  
STATE BOARD OF EDUCATION