

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF TEACHING

In the Matter of the Proposed  
Revocation or Suspension of  
the Teaching License of  
Brian R. Cole

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on April 10 and 11, 2000, in Moorhead, Minnesota. A post-hearing telephone conference call was held on April 14, 2000, and the record closed on that date.

Bernard E. Johnson, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota, 55103-2106, appeared on behalf of the Board of Teaching. Rebecca Hamblin, Attorney, Education Minnesota, 41 Sherburne Avenue, St. Paul, Minnesota 55103, appeared on behalf of Brian Cole ("Licensee").

This Report is a recommendation, not a final decision. The Board of Teaching will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and to present argument to the Board. Parties should contact Michael L. Tillmann, Acting Executive Director of the Board of Teaching, 1500 West Highway 36, Roseville, Minnesota 55113 (tel.: 651-582-8833), to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUES**

The following issues are presented in this case:

1. Did the Licensee violate Minn. Stat. § 122A.20, subd. 1(a)(4), and Minn. R. 8700.87500, subp. 2(J) by teaching during the 1995-1999 school years without a valid Minnesota teaching license?
2. If the Licensee did, in fact, violate statutes or rules by teaching without a valid license, should disciplinary action be taken against his licenses?

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Brian R. Cole, the Licensee, obtained a bachelor's degree in music education in 1992 from the University of South Dakota and a master's degree in conducting in 1994 from the University of Northern Colorado. He currently has at least 45 post-graduate credits in addition to his master's degree.<sup>[1]</sup>

2. The Licensee took his Pre-Professional Skills Test ("PPST") in November of 1990, while he was still attending the University of South Dakota. He received passing scores in each area tested.<sup>[2]</sup>

3. In May of 1994, the Licensee applied for a Minnesota teaching license.<sup>[3]</sup>

4. The first license that a teacher ordinarily obtains is a two-year entrance license. Once a school district verifies that an individual has taught for one year, the teacher moves to a five-year on-going or continuing license. The five-year license is renewable by presenting verification of having completed 125 clock hours of continuing education during the time period of the five-year license.<sup>[4]</sup>

5. On June 9, 1994, the Minnesota Department of Education (now called the Department of Children, Families and Learning) issued the Licensee two Minnesota teaching licenses, one in K-12 vocal and classroom music and the other in K-12 instrumental (band/orchestra) and classroom music. Because the Licensee did not submit his PPST test scores with his application, he was issued only "provisional" one-year licenses (rather than the more typical two-year initial license). Both licenses expired on July 1, 1995. The expiration date and instructions for renewal were written on the license. Had the Licensee submitted his PPST scores along with his application in 1994, he would have been eligible for a two-year license.<sup>[5]</sup>

6. The State does not send out license renewal reminders to teachers. It is the responsibility of each individual teacher to timely submit license renewal applications.<sup>[6]</sup>

7. Local school districts are required to have on file a copy of the current valid license of every teacher in their employ.<sup>[7]</sup>

8. During the 1994–1995 school year, the Licensee taught 4-12 music in the Thief River Falls school district.<sup>[8]</sup>

9. On May 11, 1995, the Licensee applied for a teaching position at the Robert Asp School in Moorhead, Minnesota. The Licensee indicated on his application that his Minnesota teaching licenses would expire on July 1, 1995.<sup>[9]</sup>

10. The Licensee was hired by the Robert Asp School to teach 5<sup>th</sup> and 6<sup>th</sup> grade orchestra. He signed a teacher contract with Independent School District No. 152 for the 1995-1996 school year on July 21, 1995. The School District's Human Resources Secretary did not give the Licensee the contract; rather, Bob Jernberg, the School District's Assistant Superintendent of Instruction, presented the contract to the Licensee for signature while he was rehearsing on the marching band field. The Licensee worked with the High School marching band sometime after the 1995 July 4<sup>th</sup> holiday and began teaching at the Robert Asp School in late August, 1995.<sup>[10]</sup>

11. The Licensee did not renew his teaching licenses prior to their expiration on July 1, 1995.<sup>[11]</sup>

12. Although the Licensee was aware in May of 1995 when he applied for employment with the Moorhead Public Schools that his teaching licenses expired on July 1, 1995, he subsequently forgot to submit a license renewal application. His forgetfulness was due in part to a number of significant life events that occurred in the spring and summer of 1995. These events included the following: the Licensee's wife unexpectedly left him in May, 1995, and ultimately divorced him; the Licensee's father was hospitalized after suffering a massive heart attack in June, 1995, and the Licensee thereafter spent a lot of time in Minneapolis with his father; the Licensee's younger brother moved in with him for three months because of personal issues at home; and the Licensee moved to the Moorhead area. Once he forgot to renew his licenses in 1995, he continued to forget. The need to renew his licenses never entered his mind again until it was brought to his attention in March of 1999.<sup>[12]</sup> The Licensee thought during this entire time that he was properly licensed.

13. The duties of the secretary in the Human Resources Department of the Moorhead Public Schools Independent School District No. 152 include maintaining employee files, typing employment contracts, and keeping track of teacher licensing data for the approximately 475 teachers employed in the School District.<sup>[13]</sup>

14. Based on the employment application the Licensee submitted in May 1995, the Human Resources Secretary was aware that the Licensee's teaching licenses expired on July 1, 1995. The Human Resources Secretary attached a "post-it" note to the Licensee's application on which she wrote: "Sent license to State 2420 20<sup>th</sup> Ave So Fargo, ND."<sup>[14]</sup>

15. The Human Resources Secretary typically asks teachers for a copy of their licenses when they first start working in the school district. She does not recall asking the Licensee for a copy of his teaching license when he applied or when he was hired in 1995. And she did not ask the Licensee for a copy of his teaching licenses anytime after July 1995 and before March 1999. Based upon the contents of the "post-it" note attached to the Licensee's application, the Human Resources Secretary believed that the Licensee had filed an application for licensure.<sup>[15]</sup>

16. Despite the fact that his teaching license expired on July 1, 1995, the Licensee continued to sign teacher contracts with I.S.D. No. 152 for the 1995-1996, 1996-1997, 1997-1998, and 1998-1999 school years. By signing the contracts, the Licensee represented that he was a "legally qualified and certified teacher."<sup>[16]</sup>

17. In approximately January or March of 1999, the Human Resources Secretary learned, based upon a Staff Automated Reporting System ("STARS") report, that the Licensee had failed to renew his teaching licenses.<sup>[17]</sup>

18. The Licensee first learned from the Human Resources Secretary that he did not have a valid Minnesota teaching license in March of 1999. Immediately upon being notified that his teaching licenses had expired, the Licensee informed the principal of Robert Asp School about his licensure status and kept her apprised of his efforts to obtain renewal of his licenses.<sup>[18]</sup>

19. In April, 1999, the Licensee gathered copies of his PSST scores and documentation and approval of his continuing education clock hours. He was under the

impression that he needed to provide evidence of completion of 125 clock hours of continuing education to renew his teaching license. Just prior to the hearing, the Licensee learned that, in actuality, it was not necessary for him to provide evidence of continuing education credits to move from a one-year license to a two-year license.<sup>[19]</sup>

20. On May 13, 1999, the Licensee submitted a license renewal application to the Minnesota Department of Children, Families and Learning. The Licensee included a copy of his PPST score report. When the Department discovered that the Licensee had been working on an expired license, the matter was referred to the Board of Teaching. The Board determines the appropriate discipline and directs the Department concerning the issuance of the license.<sup>[20]</sup>

21. In a letter to the Board of Teaching dated July 29, 1999, the Licensee explained that he was never asked to submit his license at the time of his hire by the Moorhead School District in 1995 and that he only realized his license had expired when the personnel office notified him in 1999 that it did not have a copy of his license on file.<sup>[21]</sup>

22. In a letter dated August 25, 1999, Michael Tillman, Acting Executive Director of the Board of Teaching, informed the Licensee that he had directed the Personnel Licensing staff of the Department of Children, Families and Learning to issue initial Minnesota teaching licenses to the Licensee. Mr. Tillman further informed the Licensee that the Board was investigating a complaint that the Licensee taught full-time during the past four school years without a valid license. Mr. Tillman explained that issuing the licenses to the Licensee did not in any way prevent the Board from seeking future disciplinary action against his licenses.<sup>[22]</sup>

23. On August 31, 1999, the Personnel Licensing staff of the Minnesota Department of Children, Families and Learning issued to the Licensee two two-year teaching licenses. One license is in K-12 vocal and classroom music and the other is in K-12 instrumental (band/orchestra) and classroom music. Both licenses expire on June 30, 2001. The Licensee thus had a valid teaching license for the 1999-2000 school year.<sup>[23]</sup>

24. Between July 1, 1995, and August 30, 1999, the Licensee continued to acquire continuing education credits.<sup>[24]</sup>

25. The Licensee is an exceptionally gifted and effective teacher who is well liked by his students. Under the Licensee's leadership, the orchestra at Moorhead's Robert Asp School has grown from 40 students to almost 200 students and it has competed successfully in state and regional competitions.<sup>[25]</sup>

26. In addition to teaching 5<sup>th</sup> and 6<sup>th</sup> grade orchestra at Robert Asp School, the Licensee is a leader among the teaching staff and is involved in the school's Building Leadership Team and technology committee. The Licensee is also the conductor of the Fargo-Moorhead Youth Symphony, works with quartets and quintets of current and former students, and is active in community education.<sup>[26]</sup>

27. The Licensee has been continuously employed as a teacher by Independent School District No. 152 (Moorhead) since July of 1995.<sup>[27]</sup>

28. Between July 1, 1995 and August 30, 1999, the Licensee did not have a Minnesota teaching license. During this time, the Licensee taught in I.S.D. No. 152 without a valid Minnesota teaching license.

29. The School District has never imposed any discipline upon the Licensee for his failure to renew his licenses or for any other reason.<sup>[28]</sup>

30. The School District never asked for a community expert variance, a letter of approval, or a waiver for the Licensee during the 1995-99 school years.<sup>[29]</sup>

31. On January 27, 2000, the Board served the Licensee with a Notice of and Order for Hearing. The Board alleged specifically that during the 1995-96, 1996-97, 1997-98, and 1998-99 school years the Licensee taught in I.S.D. No. 152 without a valid Minnesota teaching license, constituting a violation of Minn. Stat. § 122A.20, subd. 1(a)(4) and Minn. R. 8700.7500, subp. 2(J).

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Minnesota Department of Children, Families and Learning have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 (1998) and 122A.20, subd. 1 (1998).

2. The Department has complied with all relevant substantive and procedural requirements of law and rule.

3. The Licensee received proper and timely notice of the hearing in this matter.

4. Pursuant to Minn. Stat. § 122A.16, a qualified teacher is one holding a valid license, under chapter 122A, to perform the particular service for which employed in public school.

5. Pursuant to Minn. Stat. § 122A.20, subd. 1(a)(4), the Board of Teaching or the Commissioner may revoke or suspend a teacher's license for failure to meet licensure requirements.

6. The Licensee taught during the 1995-99 school years without a valid Minnesota teaching license and thus failed to meet licensure requirements in violation of Minn. Stat. § 122A.20, subd. 1(a)(4).

7. Pursuant to Minn. Stat. § 122A.20, subd. 1(a), the Board of Teaching or the Commissioner may revoke or suspend a teacher's license to teach for failure to meet licensure requirements.

8. Pursuant to Minn. R. 8700.1200, it is the responsibility of the person seeking the renewal of a continuing license to submit the application, appropriate verification, and other supporting materials to the local committee of the employing school district, in accordance with procedures and due dates established by that committee.

9. Pursuant to Minn. R. 8700.7500, subp. 2(J), a teacher shall accept a contract for a teaching position that requires licensing only if properly or provisionally licensed for that position.

10. The Licensee's teaching during the 1995-99 school years without a valid Minnesota teaching license also violated the provisions of Minn. R. 8700.7500, subp. 2(J).

11. Pursuant to Minn. R. 8700.7500, subp. 5, the Board of Teaching may impose one or more of the following penalties when it has found a violation of the code of ethics. The Board may enter into a conditional agreement with the accused teacher, issue a letter of censure to the teacher, place the teacher on probationary licensure status, or revoke or suspend the teacher's license. These actions may be taken only after all previous efforts at remediation have been exhausted.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

#### **RECOMMENDATION**

IT IS RECOMMENDED THAT the Board of Teaching take disciplinary action against Brian Cole's teaching licenses.

Dated: May 15, 2000.

---

BARBARA L. NEILSON  
Administrative Law Judge

Reported: Tape Recording Transcribed by Jean Brennan, Court Reporter, Brennan and Associates, 3052 Woodlark Lane, Eagan, Minnesota 55121 (2 volumes).

#### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

#### **MEMORANDUM**

On June 9, 1994, the Minnesota Department of Education issued Brian R. Cole two Minnesota teaching licenses. The licenses were in K-12 vocal and classroom music and K-12 instrumental (band/orchestra) and classroom music. Both licenses expired on July 1, 1995. On May 11, 1995, the Licensee applied for a teaching position with the Moorhead Public Schools (Independent School District No. 152). The Licensee was hired as an orchestra teacher for the Robert Asp School and signed a teacher

contract on July 21, 1995. The Licensee failed, however, to renew his teaching licenses prior to their expiration on July 1, 1995. Between the fall of 1995 and the spring of 1999, the Licensee taught continuously in the Moorhead School District without a valid Minnesota teaching license. The Licensee admits that he taught without a valid license. This conduct constitutes failure to meet licensure requirements in violation of Minn. Stat. § 122A.20, subd. 1(a)(4), and also constitutes a violation of the Code of Ethics set forth in Minn. R. 8700.7500, subp. 2(J).

Given the Licensee's admission and the resulting findings of statutory and rule violations by the Administrative Law Judge, the only issue remaining for consideration is what, if any, disciplinary action should be taken by the Board against the Licensee's teaching licenses. The assessment of penalties and sanctions by an administrative agency is the exercise of a discretionary grant of power.<sup>[30]</sup> The sanction imposed, however, must not exceed what is necessary to protect the public and to deter such conduct in the future.<sup>[31]</sup> Minn. Stat. § 122A.20, subd. 1(a), provides that the Board of Teaching or the Commissioner may revoke or suspend a teacher's license to teach for any of the following causes: (1) immoral character or conduct; (2) failure, without justifiable cause, to teach for the term of the teacher's contract; (3) gross inefficiency or willful neglect of duty; (4) failure to meet licensure requirements; or (5) fraud or misrepresentation in obtaining a license. The statute does not require that the Licensee's licenses be revoked. Rather, the imposition of such a sanction is left to the discretion of the Board or Commissioner. Likewise, under Minn. Rules 8700.7500, subp. 5, the Board of Teaching has the discretion to impose one of several disciplinary penalties when it finds a violation of the Code of Ethics. The penalties include issuing a letter of censure to the teacher, placing the teacher on probationary licensure status, or revoking or suspending the teacher's license.

The Licensee testified at the hearing that he simply forgot to renew his licenses prior to July 1, 1995. The Licensee explained that his forgetfulness was due in part to several significant events occurring in his life during the spring and summer of 1995, including his marriage ending, his father suffering a major heart attack, and his younger brother moving in with him. The Licensee further explained that once he initially forgot to submit his renewal application, he never remembered to do so again. The Licensee only became aware that his licenses expired when he was notified by the secretary in the School District's Human Resources Department in March of 1999.<sup>[32]</sup> The Licensee thought during this entire time that he was properly licensed. For some reason, the School District did not realize that the Licensee lacked a valid license until nearly four years after his hire. While it is the licensee's responsibility to timely submit a renewal application, local school districts are required to keep on file a copy of the current valid license of each teacher in their employ. The Human Resources Secretary testified that her duties include maintaining employee files and keeping track of teacher licensing data. For whatever reason, the Licensee's lack of a current teaching license went unnoticed by the School District for nearly four years. It was not until January or March of 1999 that the School District became aware that the Licensee's teaching licenses had expired and it was not until March of 1999 that the Licensee learned of his failure to renew his teaching licenses.

Teaching without a valid license for four school years is a serious violation of statute and rule. Yet, while the Licensee was negligent in failing to timely submit his license renewal application, at no point did he lack the qualifications to obtain a current Minnesota teaching license. The Licensee successfully passed the Pre-Professional Skills Test in 1990. He also annually acquired additional continuing education credits. Thus, this is not a situation where the School District employed a person who is otherwise unqualified to be a licensed teacher or who fraudulently misrepresented his or her credentials or licensure status.<sup>[33]</sup> Instead, this is a case where a qualified and effective teacher simply forgot to renew his license for four years. The Administrative Law Judge is convinced that the Licensee's failure to renew his teaching licenses was merely an oversight on his part and one that he truly regrets. There is no evidence in the record, for example, that by continuing to teach without a valid license, the Licensee intended to deceive or defraud the school district, the Board, or his students. There would, in fact, be no motive for deception when the Licensee met the licensure requirements necessary to obtain a valid Minnesota license the entire time.

When considering the appropriate discipline for a license violation it is relevant to consider additional evidence concerning the teacher's conduct and determine whether discipline should be recommended based upon the violation.<sup>[34]</sup> Evidence presented at the hearing established that the Licensee is a highly regarded, effective and inspirational teacher.<sup>[35]</sup> Under the Licensee's leadership, for example, the school orchestra has grown from 40 students to nearly 200 students and it has competed successfully in state and regional competitions. The Board does not dispute that the Licensee is an excellent teacher who is well thought of in the School District and has a very good reputation.<sup>[36]</sup> The Board maintains, however, that the Department must be consistent in imposing discipline. According to the Board, if it were to decide not to revoke or suspend the Licensee's license, it would be guilty of employing a double standard were it to revoke or suspend someone who, for example, taught for two years without a license.

The Administrative Law Judge is not persuaded by the Board's argument that the discipline imposed on unlicensed teachers must be consistent. Clearly the appropriateness of any discipline proposed will depend on the unique facts of each case. While Minn. Stat. § 122A.20, subd. 1(a) lists "failure to meet licensure requirements" as a ground for which the Board may revoke or suspend a teacher's license, there are still gradations of misconduct falling under this heading that are more serious and more deserving of such sanctions than others. In this case, the Licensee did violate Minn. Stat. § 122A.20, subd. 1(a)(4), and Minn. R. 8700.7500, subp. 2(J), by teaching during the 1995-1999 school years without a valid Minnesota teaching license. Accordingly, the Judge recommends that the Board take some disciplinary action against the Licensee's licenses. In this matter, however, the Licensee remained at all times a qualified teacher and there is no evidence that he intentionally misled the school district, or engaged in fraudulent, deceitful or immoral conduct. The ALJ is convinced that revocation or suspension of the Licensee's license would serve only to deprive the students of ISD No. 152 of a gifted and inspirational teacher. Pursuant to Minn. R. 8700.7500, subp. 5, the Board has the discretion to choose one of several penalties to impose on the Licensee's license and could place the Licensee on probationary licensure status for a period of time with conditions and/or issue him a letter of censure.

## B.L.N.

- 
- [1] Ex. 1; T. 210, 227, 257.
- [2] T. 54, 211-12, 216; Ex. 17.
- [3] Ex. 1; T. 23, 50-52.
- [4] T. 24-25, 67-69, 70.
- [5] Ex. 2; T. 24-25, 26-28, 33-34, 53-54, 55, 82, 215, 216.
- [6] T. 37, 61-62, 83; Minn. R. 8700.1200.
- [7] T. 37-38, 83; Minn. Stat. § 122A.22.
- [8] Ex. 7; T. 210.
- [9] Ex. 7; T. 152, 212, 216.
- [10] Ex. 12; T. 125, 145, 152, 195-96, 219, 222-23.
- [11] T. 31-32, 258.
- [12] T. 216-18, 220, 258, 266-68.
- [13] T. 123-24, 133.
- [14] Ex. 7; T. 125-26, 134.
- [15] T. 125-126, 134, 149.
- [16] Exs. 12-15; T. 130-33.
- [17] T. 137-38, 153-54.
- [18] T. 192-93, 231, 240, 241, 260.
- [19] T. 229-30, 241-44; Exs. 20-23.
- [20] Exs. 4, 5; T. 34-35, 56, 64, 72-73, 81.
- [21] Ex. 5.
- [22] Ex. 8.
- [23] Exs. 8-11; T. 40-42, 63.
- [24] Exs. 20-23; T. 243-44.
- [25] Exs. 18, 19; T. 96-98, 161-62, 173-75, 177-78, 186-88, 202, 224.
- [26] Ex. 5; T. 225-26, 212-15.

[27] T. 30.

[28] T. 197, 201.

[29] T. 44-45, 82.

[30] *In re the Insurance Agents' Licenses of Kane and Pohl*, 473 N.W.2d 869, 877 (Minn. App. 1991), rev. denied (Minn. Sept. 25, 1991), *quoting In re Haugen*, 278 N.W.2d 75, 80 n. 10 (Minn. 1979).

[31] Kane, 473 N.W.2d at 878.

[32] The Human Resources secretary testified that she first learned that the licenses had expired in January 1999 and that she then notified the secretary at Robert Asp School and also sent the Licensee a letter informing him of that fact. It was clear from later testimony of the secretary, however, that she was not certain about the date and had no supporting documentation. Moreover, the principal of Robert Asp School testified that she did not receive any such information in January 1999 from her otherwise reliable school secretary. The principal instead testified that she first became aware of the Licensee's status when he notified her himself in March 1999. And the Licensee testified that he remembers it was March of 1999 when he was first informed by the Human Resources secretary that his licenses had expired, recalling in detail his activities around the time he received the notification. The ALJ finds the testimony of the Licensee and the principal to be more credible than that of the Human Resources secretary in this regard and concludes that, although the Human Resources secretary may have learned of the expired licenses as early as January, 1999, the Licensee was not informed of his unlicensed status until March of 1999.

[33] See, e.g., *In re the Proposed Revocation of the Teacher License Renewal Privilege of M.A.*, (Findings of Fact, Conclusions and Recommendation, October 11, 1995) OAH File No. 7-1302-9909-2 (teacher, or someone on her behalf, altered face of expired license in failed attempt to establish current licensure).

[34] *Falgren v. State Board of Teaching*, 545 N.W.2d 901, 908 (Minn. 1996).

[35] It is significant that the Licensee has a strong base of support within the Moorhead School District despite his failure to renew his license. Dr. Bruce Anderson, former Superintendent of the Moorhead School District, characterized the Licensee as "probably one in [a] thousand" in his professional judgment, and said that the Licensee is a young man of "integrity, honesty, compassion for kids" and has "outstanding relationships with parents." T. 96-97. Elise Hughey, one of the Licensee's former orchestra students, testified that she "never had a teacher quite like him" and said that the Licensee makes students "get inspired to play an instrument for fun." T. 161-62. Elise's father, Michael Hughey, a sociology professor, testified that the Licensee is the "best educator I have ever seen" in "[a]ny topic at any level." T. 173. Dr. Betty Myers, the principal at the Licensee's school, testified that the Licensee is "one of the most gifted teachers I've ever worked with in 33 years, without a doubt" and stated that the Licensee's "integrity and honesty has always been beyond question." T. 186-87.

[36] T. 13.