

**BEFORE THE PROFESSIONAL STANDARDS COMMISSION
OF THE STATE OF IDAHO**

In the Matter of the Certificate of:)	Case No. 21550
)	
KEITH DURAND BARNES,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND FINAL ORDER OF THE
Respondent.)	HEARING PANEL

The Chief Certification Officer Lisa Colón (CCO) filed an Administrative Complaint against Respondent Keith Durand Barnes regarding a text message that he had sent on a teacher’s cell phone. Mr. Barnes asked for a hearing on the Administrative Complaint. A Hearing Panel of the Professional Standards Commission was convened and held a hearing as noticed beginning at 9:00 a.m. on Thursday, June 30, 2016, in the Board Room of Pocatello/Chubbuck School District No. 25, 3115 Pole Line Road, Pocatello, Idaho. Darlene Dyer chaired the Hearing Panel. Spencer Barzee and Tyler Telford were the other members of the Hearing Panel. Michael S. Gilmore, Deputy Attorney General, advised the Hearing Panel. Brian Church, Deputy Attorney General, represented the CCO. Bron Rammell, May, Rammell & Thompson, Pocatello, Idaho, represented Mr. Barnes. This written decision of the Hearing Panel reviews the proceedings, makes Findings of Fact and Conclusions of Law, and enters a Final Order that suspends Mr. Barnes’s Administrative Certificate for six months beginning on July 1, 2016 and requires him to take an ethics course that meets the CCO’s approval.

I. SUMMARY OF THE PROCEEDINGS

The Administrative Complaint alleged, the Answer to Administrative Complaint admitted, and the evidence at hearing showed that Mr. Barnes, who was the Assistant Principal at Irving Middle School in Pocatello, used a teacher’s unattended, unlocked cell phone to send the following text message to the teacher’s husband: “I want to try anal tonight [smiley face emoticon]”. The evidence at hearing, particularly Mr. Barnes’s evidence and his cross-examination, largely centered on the aftermath of this message and the context in which this message was sent.

Seven witnesses testified at hearing: Irving Middle School Principal Tonya Wilkes; Pocatello/Chubbuck Director of Human Resources and former Alameda Middle School Principal

Susan Pettit; Pocatello/Chubbuck Superintendent of Schools Dr. Douglas Howell; Chief Certification Officer Lisa Colón; former Pocatello/Chubbuck teachers Naomi H~ and Caleb H~, who were the couple whose cell phones sent and received the text message at issue; and Respondent Keith Barnes.

The text message in question was based upon comedian Amy Schumer’s telling Tonight show host Jimmy Fallon how she had pulled a similar prank on news personality Katie Couric when Ms. Couric left an unattended cell phone at a table they were sharing. Mr. Barnes had seen Ms. Shumer tell the story on the Tonight show.¹ Mr. Barnes testified that he had seen Ms. H~ leave her unlocked cell phone around the school many times. At a social gathering not long before the message in question was sent, Mr. Barnes, who had been on the faculty with Mr. H~ at Alameda Middle School, had told Mr. H~ that Mr. Barnes was going to use Ms. H~’s unattended cell phone to send Mr. H~ “something dirty” when Ms. H~ left her cell phone unattended again.

Mr. Barnes seized his “opportunity” not long afterwards. Ms. H~ was the seventh-grade-girls volleyball coach. During pre-game warm-ups at Irving Middle School before a mid-afternoon game, Ms. H~ left her cell phone unattended in the gymnasium where the volleyball game would be played. Mr. Barnes picked up the phone, sent the text message, and returned the phone to a table in the gymnasium.² Ms. H~ was not aware of the text message until after the game. When she discovered the message and her husband’s response of “Whoa!”, Exhibit CCO-2, she became upset and confronted Mr. Barnes in or near Irving Middle School’s administrative offices, loudly saying words to the effect of “What did you do?” and “Why did you do it?”

Principal Wilkes observed Mr. Barnes and Ms. H~ as Ms. H~ confronted Mr. Barnes.³

¹ See <https://www.youtube.com/watch?v=vh1ige7IVyU>. Exhibit B.

² There was conflicting evidence whether Mr. Barnes picked the phone up from the floor or a table, but it makes no difference to our decision which happened.

³ The testimony is inconsistent about where the three of them were when Ms. H~ approached Mr. Barnes. These inconsistencies do not reflect upon the credibility of the witnesses. In times of stress, people do not register where they were and what was said and done with photographic detail, and they will honestly (and sometimes mistakenly) fill in gaps where their memories are imprecise. As we explained in footnote 2, these differences do not affect our decision.

Although Mr. Barnes had given Ms. H~ a “joking denial” that he was not responsible for the text, he told Principal Wilkes what he had done. Principal Wilkes then sought assistance from the School District’s Human Resources staff. After consultation with them, Mr. Barnes was put on administrative leave the next day and resigned not long afterwards.⁴

Mr. Barnes testified about the context in which he sent the text. He was friends with both Mr. H~ and Ms. H~. He had taught with Mr. H~ at Alameda Middle School. He had alerted Mr. H~ about his intention to give Ms. H~ a lesson for leaving her cell phone unattended. Indeed, Ms. H~ testified at hearing that her biggest concern upon discovering the text message was that someone had picked up her cell phone and read the message because students had used her unattended, unlocked cell phone in the past to take pictures of themselves. It was a very real possibility to her that one of her students had seen the text.⁵

Mr. H~ and Ms. H~ testified at hearing. They had no lasting ill will toward Mr. Barnes. They had sent a handwritten, undated letter to him expressing their regret for how the situation was handled. Exhibit CCO-3. Perhaps inadvertently, however, they identified another issue.

We also cannot help but feel partially responsible for this whole thing because neither of us told you seriously enough to stop saying the things you were saying. We both consider you a wonderful friend and colleague and would never want anything bad to happen to you or your family. ...

I (Naomi) also feel bad for opening my mouth in front of [Principal Wilkes] — I really should have thought before I blurted, because I knew you were only joking around and would never want me to feel uncomfortable.

Exhibit CCO-3. In her testimony Ms. H~ elaborated that some of the things Mr. Barnes said involved comments about students. While Mr. Barnes questioned the School District’s ultimate

⁴ Some testimony addressed whether Superintendent Howell or other School District administrators misled or misinformed Mr. Barnes about the consequences of resignation or whether a report about his conduct would be forwarded to Department of Education or Professional Standards Commission officials. None of that matters. The School District cannot tie the Professional Standards Commission’s hands.

⁵ None of the witnesses at hearing thought that anyone else saw the message before Ms. H~ saw it. But, the possibility that a student could have seen it was not unfounded if students had earlier taken “selfies” on her phone.

treatment of him, the H~s' letter shows that more was going on with him than one instance of a cell phone prank. We cannot consider anything more than the cell phone prank here, but we think it important to emphasize that it was not other people's responsibility to keep Mr. Barnes out of trouble; it was his own responsibility to police himself.

II. THE APPLICABLE LAW

Idaho Code § 33-1208 and § 33-1209 govern this case. They allow the CCO to initiate disciplinary proceedings against certificate holders for a variety of grounds set forth in statute and State Board of Education Rules.⁶ The statutes and the rules in question — the Code of Ethics of the Teaching Profession — prohibit harassment of a colleague and allow suspension or revocation of a certificate for willfully doing so.⁷

⁶ Idaho Code § 33-1208 provides in part:

§ 33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds. — 1. The professional standards commission may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

...

j. Willful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

...

....

Idaho Code § 33-1209 provides in part:

(2) Proceedings to revoke or suspend any certificate ... shall be commenced by a written complaint Such complaint shall be made by the chief certification officer stating the ground or grounds ... for revocation or suspension and proposing that ... the certificate be revoked or suspended. ...

....

(4) Any such hearing shall be conducted by three (3) or more panel members appointed by the chairman of the professional standards commission, a majority of whom shall hold a position of employment the same as the person complained against. ...

....

(6) At the conclusion of any hearing ..., the hearing panel shall submit to the [CCO], a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with the findings of fact and a decision. The hearing panel may ... suspend or revoke the certificate, or ... order that reasonable conditions be placed on the certificate or a letter of reprimand be sent ..., or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

⁷ Idaho State Board of Education Rule Governing Uniformity 76.11, IDAPA 08.02.02.076.11, provides:

III. ANALYSIS OF THE LAW AND FACTS

We are not naïve enough to think that there is never inappropriate “trash talking” or “locker room gags” among certified education personnel. We surmise that most of these activities will never come to the attention of their superiors or the PSC, in so small part because they are done privately and not in a public area like a middle school gymnasium. We need not address the appropriate disciplinary response for such a situation.

This situation was very different. This prank played out in a school gymnasium during school activities where any student who picked up Ms. H~’s phone might have discovered the prank. Further, Mr. Barnes was not Ms. H~’s fellow faculty member, but was part of the school administration that supervised her. While Mr. Barnes may have felt that he was playing a private joke on a friend, it was happenstance that no student became involved and that the prank remained private. Further, whatever Mr. Barnes’s relationship with Ms. H~ may have been outside the school, at school he was her supervisor, not her “friend.”

In this circumstance (a prank by an assistant principal against a teacher/coach that played out in a school gymnasium during the prelude to a school athletic event), the principal and school district administrative personnel found out what happened and became involved. To Mr. Barnes’s credit, he honestly said what he had done when questioned by his superiors after his “joking denial” to Ms. H~. None of that changes the fact that Mr. Barnes behaved unprofessionally and harassed a subordinate.

Although the circumstances of Mr. Barnes’s resignation are not among this Hearing Panel’s concerns, we will not be unmindful of his loss of school-based employment for most of last school year in crafting the appropriate discipline. That being said, as we stated in footnote 4,

11. Principle X — Professionalism. A professional educator ensures just and equitable treatment for all members of the profession in the exercise of academic freedom, professional rights and responsibilities while following generally recognized professional principles. Unethical conduct includes, but is not limited to:

...

b. Committing any act of harassment toward a colleague;

....

how the School District handled Mr. Barnes's employment is not our concern.

Mr. Barnes holds certificates for both administration and teaching. Exhibit CCO-1. Our decision focusses on his Administrator's certificate. Mr. Barnes was once Mr. H~'s fellow faculty member at Alameda Middle School. He was not Ms. H~'s fellow faculty member at Irving Middle School; as an Assistant Principal, he had a different relationship with her. Whatever one might think of what Mr. Barnes did with Ms. H~'s phone, its inappropriateness was compounded by his position as her Assistant Principal. Mr. Barnes did not recognize that distinction when he picked up her phone and "hacked" her.

We decide that Mr. Barnes's Administrator's certificate should be suspended for six months beginning July 1, 2016. During that six months, he must take an ethics class with content that meets with the CCO's approval and must submit proof of completion of that class to the CCO. At the end of the six months, or the completion of the ethics class and documentation of completion of the ethics class to the CCO's satisfaction, whichever is later, the suspension of the Administrator's certificate will end. We do not discipline his teaching certificate.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Respondent Keith Durand Barnes holds both an Idaho Administrator — School Principal Pre-K-12 Certificate and a Standard Secondary Business Technology Education Certificate. Exhibit CCO-1

2. Mr. Barnes began the 2015-2016 school year as the Assistant Principal at Irving Middle School in the Pocatello/Chubbuck School District.

3. Irving Middle School's seventh-grade-girls volleyball team was scheduled to play a home game on the afternoon of September 8, 2015. Ms. H~, a member of the Irving Middle School faculty, coached the team. Ms. H~ left her unlocked, unattended cell phone in the gymnasium before the game began. Mr. Barnes picked up the cell phone and texted, "I want to try anal tonight [smiley face emoticon]," to Ms. H~'s husband. Exhibit CCO-2.

B. Conclusions of Law

1. This Hearing Panel has authority under Idaho Code § 33-1208 and § 33-1209 to hear this contested case initiated by the Chief Certification Officer's Administrative Complaint against Mr. Barnes.

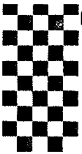
2. This Hearing Panel has authority under Idaho Code § 33-1208 and § 33-1209 to revoke, suspend, or place reasonable conditions upon Mr. Barnes's administrative and teaching certificates.

3. The text message that Mr. Barnes sent to Mr. H~ on Ms. H~'s cell phone constituted willful harassment of a colleague that Mr. Barnes supervised. This willful harassment was in violation of Idaho Code § 33-1208, subsection 1.j, and Idaho State Board of Education Rule Governing Uniformity Rule 76.11, IDAPA 08.02.02.076.11.

4. This Hearing Panel has authority under Idaho Code § 33-1208 and § 13-1209 to: (a) determine appropriate discipline against Mr. Barnes's certificates for his violation described in Conclusion of Law 3, (b) exercise its discretion to impose appropriate discipline by suspending Mr. Barnes Administrative Certificate — School Principal Pre-K-12 for six months beginning on July 1, 2016, and (c) end the suspension upon Mr. Barnes's completion of an ethics course that the Chief Certification Officer approves.

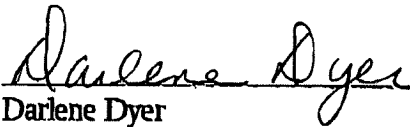
FINAL ORDER

IT IS THE FINAL ORDER of this Hearing Panel that the Administrative Complaint against the certificates/credentials of Keith Durand Barnes is adjudicated as set forth in the text of this FINAL ORDER and that Mr. Barnes's Administrative Certificate for School Principal Pre-K-12 be suspended for six months beginning on July 1, 2016, and ending on December 31, 2016, subject to the provision of the following paragraph.



IT IS THE FURTHER ORDER of this Hearing Panel that Mr. Barnes must take an ethics class subject to the approval of the Chief Certification Officer and that the suspension described in the previous paragraph shall continue until (a) he has proven completion of the ethics class to the Chief Certification Officer, or (b) December 31, 2016, whichever is later.

Dated this 12th of July, 2016.


Darlene Dyer
Hearing Panel Chair

Review of Final Order

THIS IS A FINAL ORDER OF THE HEARING PANEL. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of its service date. The Hearing Panel is required by law to dispose of a Petition for Reconsideration within twenty-one (21) days of its filing or the Petition for Reconsideration will be considered to be denied by operation of law. See Idaho Code § 67-5243(3).

Petitions for Reconsideration of this Final Order may be filed by mail addressed to the Professional Standards Commission, Department of Education, Statehouse, Boise, ID 83720 0027, or may be delivered to the Department of Education, Len B. Jordan Building, Room 200, 650 West State Street, Boise, Idaho, and must be received within fourteen (14) days of the service date of this Final Order.

Judicial Review

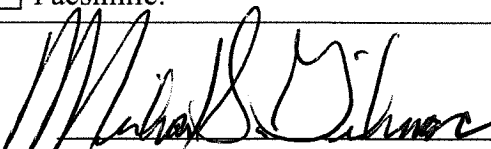
Pursuant to Idaho Code §§ 33-1209(8), 67-5270, and 67-5272, any party aggrieved by this Final Order or by another Order previously entered in this Contested Case may obtain Judicial Review of this Final Order and of all previously issued Orders in this Contested Case by filing a Petition for Judicial Review in the District Court as provided by those sections.

A Petition for Judicial Review must be filed within twenty-eight (28) days of the service date of this Final Order, or, if a Petition for Reconsideration is timely filed, within twenty-eight (28) days of the service date of a decision on the Petition for Reconsideration or denial of the Petition for Reconsideration by operation of law. See Idaho Code §§ 67-5246 and 67-5283.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of July, 2016, I caused to be served a true and correct copy of the preceding FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER OF HEARING PANEL by the method(s) indicated below and addressed to the following:

Bron Rammell May, Rammell & Thompson, Chartered 216 W. Whitman P.O. Box 370 Pocatello, ID 83204-0370	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: bron@mrtlaw.net <input type="checkbox"/> Facsimile: (208) 234-2961
Brian Church Deputy Attorney General Statehouse Boise, ID 83720-0010	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: brian.church@ag.idaho.gov <input type="checkbox"/> Facsimile:
Douglas Howell, Superintendent Susan Pettit, Director of Human Resources Pocatello-Chubbuck School District 3115 Pole Line Road Pocatello, ID 83201	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: pettitsu@sd25.us <input type="checkbox"/> Facsimile:



 Michael S. Gilmore
 Deputy Attorney General