IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

GERALD S. HITES	)	**CASE NO. 13CV000035**
Appellant	)	**JUDGE EUGENE A. LUCCI**
vs.	)	**ORDER VACATING BOARD OF EDUCATION DECISION**
OHIO STATE BOARD OF EDUCATION	)	
Appellee	)	

{¶1} The court has considered: (1) the notice of appeal, filed January 4, 2013; (2) the certified record of proceedings, filed January 28, 2013; (3) the appellant's brief, filed February 25, 2013; (4) the appellee's motion for leave to exceed page limitation, filed March 12, 2013; (5) the appellee's brief, filed March 12, 2013; and (6) the appellant's reply brief, filed March 18, 2013. The appellee's motion for leave to exceed page limitation is well-taken and is hereby granted. The appellee's brief, filed March 12, 2013, is hereby deemed properly filed.

{¶2} This is an appeal of the decision of the Ohio State Board of Education (the board) to suspend the appellant's pupil activity permit and prohibit him from applying for a pupil activity permit until after December 11, 2015.

{¶3} R.C. 119.12 provides that on an appeal such as this, the court may affirm the decision of the administrative agency if the court finds that the order is supported by reliable, probative, and substantial evidence, and is in accordance with law. Otherwise, the court may reverse, vacate, or modify the order. R.C. 119.12.

{¶4} On February 13, 2012, a notice of opportunity for hearing was issued to the appellant, indicating that the board intended to determine whether to limit, suspend, revoke, or permanently revoke the appellant's professional education of the handicapped teaching certificate and his pupil activity permit based on two counts of conduct unbecoming to the teaching profession. Count 1 alleged that the appellant made arrangements to transport a student to and from an out-of-town baseball showcase. It further alleged that shortly before the time of departure, the appellant notified the parents

that he could not transport the student to the showcase, but would bring him home from the showcase. Count 1 further alleged that the appellant then failed to attend the showcase, leaving the student stranded away from home. Count 2 alleged that the appellant knowingly contributed to or knowingly failed to intervene in the harassment, intimidation, or bullying of the student when the appellant wore a t-shirt with a phrase that the student found intimidating. A hearing was held on July 17, 2012.

{¶5} Regarding Count 2, the hearing officer determined that there was no evidence of an intent to intimidate, harass, or bully the student, and wearing the t-shirt did not rise to the level of misconduct contemplated in R.C. 3319.31(B)(1). The board did not reject or modify this portion of the hearing officer's decision, and this does not appear to be at issue on this appeal.

{¶6} Regarding Count 1, the hearing officer found that the appellant approached the student and his father after a baseball practice and suggested that the student participate in a baseball showcase to take place in Dayton, Ohio. The hearing officer found that it was understood by the student, the student's family, and the appellant, that the appellant would provide transportation to and from the showcase, that the student would stay in a hotel overnight with the appellant, and the appellant would sign an authorization for the student to participate in the showcase.[1] The hearing officer found that on the morning of the first day of the showcase, June 13, 2011,[2] the appellant accepted an interview at a different school district, and contacted the student's mother that morning and notified her that he would not be able to transport the student to the showcase. The hearing officer found that the student's family, believing that the appellant would still be able to bring the student home, made arrangements for the student to travel to Dayton with another family. However, the other family was not returning after the showcase, but continuing on to a baseball tournament in Kentucky. The hearing officer additionally found that the appellant was offered and accepted a second interview to take place on June 14, 2011, and, as a result, the appellant informed the student's mother that he would not be attending the showcase. The hearing officer found that at the conclusion of the showcase,

[1] It is unclear whether the hearing officer found that the student would stay in the same hotel room with the appellant, or at the same hotel in a separate room.

[2] The showcase took place on June 13, 2011 and June 14, 2011. Transcript of July 17, 2013 hearing, p. 264.

the student was in Dayton with no money, no supervision, and no transportation home. The student ultimately continued on the trip with the other family to Kentucky, were the student's father later picked him up.

{¶7} Based on these findings, the hearing officer concluded that the appellant had been negligent and engaged in conduct unbecoming to a teacher. The hearing officer concluded, however, that the misconduct was not sufficiently serious to warrant a suspension or revocation of the appellant's teaching license or pupil activity permit, and determined that a letter of admonishment was sufficient.

{¶8} The board rejected the portions of the hearing officer's decision that found that the appellant's conduct did not merit a suspension or revocation of his license or permit, and the portions finding that a letter of admonishment was sufficient. The board found that the appellant initiated the student's participation in the showcase, led the student's parents to believe that the appellant would be responsible for transportation and supervision, failed to provide transportation and supervision, resulting in the student being stranded miles from home without money, supervision, or transportation. The board found that the appellant's conduct had an impact on his immediate and future licensure and employment, and warranted a sanction more serious than an admonishment. The board found that the conduct involved a minor school child and negatively reflected upon the teaching profession. The board also found that the appellant placed his own personal interests above the safety and welfare of a student. The board indicated that it did not find the mitigating factors to be persuasive and that the nature and seriousness of the conduct supported suspending the appellant's pupil activity permit.

{¶9} There is no reliable, probative, and substantial evidence to support the finding that the appellant, the student, and the student's family had made arrangements for the appellant to transport the student and provide supervision and lodging, or that the appellant led the student's parents to believe that he would provide transportation and supervision. Although the student's father initially testified that the appellant was supposed to transport the student to and from the showcase, on cross-examination, the father indicated that he did not have any direct conversations with the appellant regarding transportation for the showcase. Transcript of July 17, 2013 hearing, p. 31, 52. Further, the father testified that he did not communicate to the appellant that the family that

transported the student to the showcase would be unable to bring him home. *Id* at 53. Rather, the father testified that he thought the student had discussed this with the appellant. *Id.* However, the student testified that he was not involved in making the travel arrangements. *Id* at 66. The student testified that after he arrived at the showcase, he called the appellant, and the appellant indicated that he would be there later that night or the next morning to sign the student up for the showcase. *Id* at 67. The student did not testify that any conversation took place regarding giving the student a ride home, or providing a hotel room for the student. *Id* at 66-67. Further, the student testified that they had this conversation after the student had already arrived in Dayton. *Id.* The only evidence of any agreement that the appellant would transport the student to and from the showcase is the testimony of the superintendent, at the hearing held more than a year after the showcase, that the appellant admitted at a meeting, held approximately one month after the incident took place, that the appellant had agreed to provide transportation.[3] *Id* at 96. The appellant testified that, in retrospect, he thinks it was assumed that he would provide transportation, but that no one ever directly asked him if he would do so, and he never specifically agreed to do so. *Id* at 267-268. Specifically, the appellant testified that the previous year he had transported a couple of students to the showcase, whose parents met them there later that day, and that he assumed he would do the same for the 2011 showcase. *Id.* This is not reliable, probative, and substantial evidence of an obligation on the part of the appellant to provide transportation, food, and lodging to the student. It is implausible to find that the appellant and the parents agreed that the appellant would transport the student, a minor, hundreds of miles from home and stay in a hotel overnight with the minor, without any evidence of a discussion as to when they would leave, where they would be staying, whether they would stay in the same hotel room, who would pay the costs of the student's lodging and meals, and when they would return.

{¶10} Further, there is no reliable, probative, and substantial evidence to support the finding that the appellant, after notifying the family that he would not be leaving for the showcase that day, agreed to bring the student back home. There is no evidence that after informing the student's mother that he would not be leaving for the showcase on that day,

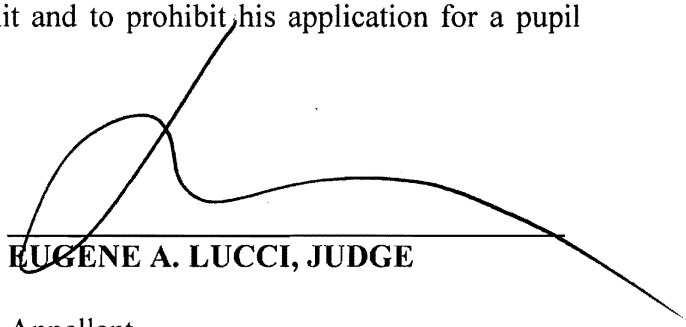
[3] The appellant's recollection was that he took responsibility for any lack of communication. *Id* at 276.

the appellant was ever asked to provide a ride home, or ever informed that the student needed a ride home. The appellant testified that after notifying the student's mother that the appellant would not be leaving for the showcase when he originally intended to, and that he would not be transporting the student to the showcase, he informed her that he intended to go to the showcase later that night or the next morning, but was not sure whether or when he would be able to go to the showcase. *Id* at 270. Ultimately, the appellant decided to accept a second interview and not go to the showcase. *Id* at 271. Upon being offered a second interview, he called the student's mother to let her know that he would not be attending the showcase. *Id.* The appellant testified that he did not know that the student did not have a ride home, and that, had he known, he could have made arrangements for the student to get a ride home. *Id* at 271, 273, 277.

{¶11} Correspondingly, there is no reliable, probative, and substantial evidence to support the findings that the appellant's actions left the student stranded without money, supervision, or transportation, or that he placed his personal interests above the safety and welfare of the student. Even assuming that the appellant's assumption that he would take the student to the showcase and the parents would meet him there somehow created an obligation to do so, or even assuming that he had in fact explicitly agreed to transport the student to and from the showcase, the appellant clearly communicated, albeit with little notice, that he would not be doing so. The family knew, prior to the student's departure for the showcase, that the appellant would not be transporting the student to the showcase and providing supervision. At that point the family made other arrangements to have the student taken to the showcase. There is absolutely no evidence that the appellant was aware that the student did not have a way back home, or that the student did not have money or supervision. Even assuming the appellant had any obligation to transport the student to and from the showcase, and further assuming that the appellant failed to meet this obligation by agreeing to the interview and notifying the mother that he would not be able to take the student to the showcase, the appellant did not put the student's welfare or safety in jeopardy. At worst, the appellant's alleged actions could have put the student in a position where he would not have been able to participate in the showcase due to lack of transportation.

{¶12} For these reasons, the court finds that the board's decision is not supported by reliable, probative, and substantial evidence, and hereby vacates the board's decision to suspend the appellant's pupil activity permit and to prohibit his application for a pupil activity permit.

{¶13} **IT IS SO ORDERED.**



EUGENE A. LUCCI, JUDGE

c: Rachel M. Reight, Esq., Attorney for Appellant
Michael C. McPhillips, Esq., Attorney for Appellee

FINAL APPEALABLE ORDER
Clerk to serve pursuant
To Civ.R. 58(B)