

## LICENSING HEARING PANEL

VT College, Dewey Lounge

February 12, 2008

### A G E N D A

- 1:30 – 1:45 p.m.      Call to Order  
**1 (A) Approval of Minutes – September, 14 2008**      Action  
Correspondence/Announcements  
Board Member Updates
- Introductions and Agenda Preview  
Mark Oettinger, Esq., DOE General Counsel  
Armando Vilaseca, Chair, LHP
- 1:45 – 2:15 p.m.      Case Studies, Small Group Deliberation
- 2:15 – 2:45 p.m.      Report out of group deliberations, Questions
- 2:45 – 3:00 p.m.      ***Break***
- 3:00 – 3:45 p.m.      Legal Analysis, Questions  
Tom Lehner, Esq., Hearing Officer
- 3:45 – 4:15 p.m.      Panel Discussion  
Barbara Crippen, Esq., DOE Legal Counsel  
Mark Oettinger, Esq., DOE General Counsel  
Matt Raymond, DOE Investigator  
Joel Cook, Esq., Vermont NEA Executive Director
- 4:15 – 4:30 p.m.      Summary, Future Training – Adjourn  
Armando Vilaseca, Chair, LHP

*\*The action listed next to each agenda item represents the intent of the Hearing Panel at the time the agenda is printed. It is possible that action may or may not be taken on any item listed on the agenda.*

**LICENSING HEARING PANEL**  
February 12, 2008  
VT College, Dewey Lounge, Montpelier

**MINUTES**

**MEMBERS PRESENT:** Deb Benning, Kevin Endres, Curtis Hier, Cynthia Hinrichsen, Gail Kilmartin, John Pandolfo, Deborah Rathburn, Armando Vilaseca, Dana Cole-Levesque.

**MEMBERS ABSENT:** Kathryn Christy, Roland Burroughs, Lee Orlando, Cheryl Chedester.

**STAFF PRESENT:** Mark Oettinger, Barbara Crippen, Matt Raymond, Marta Cambra, Bob Gross, and Rebecca Otis.

**VISITORS/OTHERS PRESENT:** Tom Lehner, Esq., Hearing Officer; Donna Watts, VT NEA; Jeff Fannon, VT NEA.

**Introductions, Agenda Preview**

A. Vilaseca informed Board members that he will no longer be emailing them when their input is needed. M. Raymond will be calling them directly.

Board members introduced themselves to the group.

M. Oettinger introduced himself to the Board. He gave an overview of the documents members were sent to review. These reports were issued by T. Lehner. Members will be in small groups to simulate the process of reviewing the hearing officer's report and recommendation. The group will report on the decision they would have made as a figurative panelist.

T. Lehner will detail how he conducts these hearings and issues the recommendations. Members will also have a chance to ask questions about the process.

The panel discussion will detail the separate roles that staff and VT NEA attorneys will be filling when litigating a case. To aid in this discussion, B. Crippen, M. Raymond, J. Fannon and D. Watts will be speaking as panelists.

C. Hinrichsen asked if they find procedural errors within the documents, should they bring these to someone's attention.

M. Oettinger responded that members have extensive authority over these cases. Members can conclude differently than what is written if they so choose.

C. Hier asked about teachers that are abusive and have errors in judgment. What is the law that the Board is operating under?

M. Oettinger responded that the statutory definition of unprofessional conduct is described in Title 16 VSA 1698. The VSBPE will also be drafting a Guideline of Professional Conduct for Vermont Educators, which will further illustrate the statute.

G. Kilmartin clarified that the small groups will deliberate as if the case is before them and happening now.

M. Oettinger suggested that they view the cases as if they are receiving the reports. They would need to approve, reject, modify, or call for more evidence regarding the decision.

## **Case Studies, Small Group Deliberation**

The Board broke into small groups to discuss the case studies.

### **Report out of group deliberations, Questions**

G. Kilmartin asked if their group felt there were procedural errors, what step they should take next.

B. Crippen responded that the Board should not be reviewing the school's process. This is not their role. If there is a procedural error on the part of the Department or the hearing officer, that would be their concern.

A. Vilaseca stated that given this information, their group concurs with the hearing officer's decision based on the report.

C. Hier asked if the decision they make will appear on the Department of Education's website.

M. Oettinger said that this is correct under the current policies. If the decision is to suspend or revoke an educator's license, this information will be posted. In the case of a public or a private reprimand, those are not currently posted.

J. Pandolfo stated that their group decided to uphold the recommended decision. They questioned if the teacher was put on administrative leave by their district for the rest of the year, in some ways a sanction against their license would be duplicating this reprimand. If this sanction does put the educator's name on the DOE website, is that more damage that the situation might warrant?

M. Oettinger responded that there should be a distinction between the contract related action, and the licensing action. These serve different purposes.

C. Hier stated that, as a teacher, he found himself looking at the mitigating factors of the case.

D. Watts responded that as a teacher advocate, there are some things that can't be mitigated against.

J. Pandolfo said the other question their group had, was if the licensing decision includes as an example, a requirement for a behavioral management training. Is the intent to aid and rehabilitate the educator?

M. Oettinger responded that there are different purposes for reprimands. The panel members must decide which purpose best fits the situation at hand.

C. Hinrichsen stated that their group talked about this educator's inappropriate past choices. They did realize that they should not be reviewing the school's processes. However, the question out there is still how much was done to support the teacher previous to this incident.

M. Oettinger stated that it sounds like the group is questioning whether this educator's past offenses were brought to their attention. If so, and the incident occurred after warnings, that makes the educator highly culpable. The members could ask for additional evidence in that instance. In addition, if the panel wanted to know what kind of treatment was sought, they could request this as well.

B. Crippen responded that she would be concerned about litigating a case about a collateral issue, i.e. the school administration's role. This would retract from the incident itself. The hearing officer should hear from the parent. There is an obligation to look at the community and parental expectations, as essentially, these cases are setting the bar.

C. Hier stated that there are many of factors to consider in these cases. The panelists are also deciding what kind of a reprimand to assuage.

D. Cole-Levesque stated that the panelist's role is to focus on the licensee and what they are doing. They take into account whether or not the sanctions they are prepared to impose, are fitting of the incident. How that licensee got to that point is a separate issue.

G. Kilmartin stated that she agrees. However, how the licensee got to the incident, certainly does affect the situation as a whole.

K. Endres added that the group did agree with the hearing officer's decision.

D. Benning stated that in any given organization there are people who could be blamed. However, when you close your classroom door, there has to be a level of public trust that is upheld. If a teacher is unable to act appropriately, there is no one else to blame.

C. Hier asked why the panelists are allowed to see findings of fact that they are not supposed to take into account.

D. Benning responded that those facts are what assist the hearing officer in making their decision.

### **Conducting the Hearing Tom Lehner, Esq., Hearing Officer**

T. Lehner introduced himself to the Board. He described fundamental fairness and its role in the adjudicative process. He detailed the hearing process with respect to the hearing panel and its role.

### **Approval of Minutes, September 14, 2007**

**J. Pandolfo moved that the Licensing Hearing Panel approve the minutes of the September 14, 2007 meeting. K. Endres seconded. Motion passed.**

The Board discussed the possibility of having half-day training as well as a mock hearing.

There being no further business, the meeting adjourned by consensus at 2:55 p.m.

---

Rebecca Otis, Administrative Assistant

---

Armando Vilaseca, Chair