

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13EDC13731

<p>Gary Alan Cooper Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION Respondent.</p>	<p>FINAL DECISION</p>
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This matter came on to be heard before Administrative Law Judge Beecher R. Gray on November 12, 2013 in Fayetteville, North Carolina. Respondent filed a Proposed Decision on November 25, 2013.

APPEARANCES

For the Petitioner: Gary Alan Cooper, appearing *pro se*
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Hope Mills, NC 28348

For the Respondent: Tiffany Y. Lucas
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FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Petitioner submitted an application for reinstatement of his North Carolina teaching license on or about October 29, 2012. On his application for reinstatement, Petitioner indicated that he had been convicted of a crime other than a minor traffic violation and that his license previously had been revoked or suspended by a state or governing body.

3. Upon request from Respondent North Carolina Department of Public Instruction (“Respondent”) for a written explanation of the incidents resulting in the criminal conviction referenced on Petitioner’s application, and for supporting documentation regarding the prior suspension or revocation of his teaching license, Petitioner submitted a statement with supporting documentation to Respondent confirming that he had pleaded guilty to a charge of assault on a female in 2007. Petitioner submitted documentation regarding a criminal charge of assault and battery on a student brought against him in 2004, which ultimately was dismissed based upon the inability of the prosecutor to locate the prosecuting witness and insufficient evidence. Petitioner also submitted documentation confirming that his North Carolina teaching license had been revoked in 2008 based upon his guilty plea to the charge of assault on a female in 2007, and the assault and battery charge in 2004.
4. In connection with his application for reinstatement, Petitioner was called in to be interviewed by the Superintendent’s Ethics Advisory Committee in April 2013. The Ethics Advisory Committee consists of professional educators appointed by Superintendent June Atkinson to review applications for a teaching license where the applicant has indicated that he or she has a prior conviction or has a prior license revocation or suspension . Petitioner was interviewed by members of the Committee and admitted that he had pleaded guilty to the charge of assault on a female (his ex-wife). Petitioner admitted that he was placed on supervised probation, two requirements of which were to attend AA meetings for 90 days and to complete a 26-week CARE family domestic violence program. Petitioner acknowledged that while he was married, he drank alcohol a lot, but maintained that he never drank excessively. Petitioner acknowledged that he continued to drink and drive, even after completion of the conditions of his probation.
5. Petitioner did not disclose to the Ethics Advisory Committee that he had any additional criminal convictions or guilty pleas in his past, or that he ever had any other action taken on his teaching license or certificate beyond what he disclosed as set forth in paragraphs 2 and 3 above.
6. After hearing from Petitioner and reviewing relevant documents, and because of concerns raised through Petitioner’s interview, the Ethics Advisory Committee voted to table making a recommendation regarding his teaching license reinstatement application pending further investigation into Petitioner’s professional background and criminal record.
7. Following Petitioner’s April 2013 interview, Respondent obtained information and documentation concerning an application for a Florida teaching license submitted by Petitioner in 1995. That Florida application was denied and resulted in the issuance to Petitioner of a formal letter of reprimand from the Commissioner of Education for the State of Florida. The basis for the denial and reprimand was that Petitioner had submitted a fraudulent application in that he did not disclose on the application a 1992 conviction of issuing worthless checks (2 counts) or a 1994 conviction of larceny. Petitioner did disclose a 1991 conviction of possession of stolen property on the

application for a Florida teaching license. Petitioner did not disclose to Respondent in this action, the 1991 conviction for possession of stolen property, the 1992 conviction for worthless checks, or the 1994 conviction for larceny.

8. The State Board of Education may revoke or deny a teaching license for conviction of a crime, including a plea of guilty to a crime, if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner. 16 N.C.A.C. 6C.0312(a)(3) The State Board of Education also may revoke or deny a teaching license for any illegal, unethical, or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C.0312(a)(8)
9. The only issue in this contested case is whether the foregoing criminal convictions of record and failure of Petitioner to disclose them bear an adverse relationship to the continuing ability of Petitioner to be an effective teacher.
10. Teachers are required in this State, both by Rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as a positive role model for children. 16 N.C.A.C. 6C.0602(b)(2); Faulkner v. New Bern-Craven Board of Education, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984)
11. As our Supreme Court observed in Faulkner:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (emphasis added)

12. In this case, Petitioner has applied to be a teacher and has admitted his convictions for assault, larceny, receipt of stolen property, and issuing worthless checks. Petitioner also has admitted that when he applied for a North Carolina teaching license reinstatement, he only disclosed the assault on a female conviction. Teachers in this State are expected to be role models for their students. Moreover, teachers are expected to be honest and to provide truthful and accurate information regarding licensure. Petitioner's past behavior does not demonstrate the kind of character and conduct expected of teachers. Parents are entitled to have their children entrusted to individuals of the highest moral character, personal conduct, and professional ethics. Persons convicted of crimes who are

untruthful about it when asked by the agency charged with issuing teaching licenses in this state, do not meet the threshold requirement required by law for school teachers we expect to be role models for our children.

13. The conduct with which Petitioner was charged and convicted, and the subsequent conduct of failing to disclose those convictions, fails to adhere to the high standards of character and conduct demanded of teachers in this State, and there is clearly an adverse relationship between Petitioner's conduct and his ability to perform his duties in a professionally effective manner.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings. Petitioner has the burden of proof to demonstrate by a preponderance of the evidence that the State Board of Education erred in denying his request for a teaching license reinstatement. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E. 2d 272 (1988)
2. Petitioner's conduct bears a "reasonable and adverse relationship" to Petitioner's ability to perform any of his professional functions in an effective manner.
3. Petitioner's conduct is not consistent with the high standards of conduct expected of teachers in this State. See Faulkner v. Board of Education, 311 N.C. 42, 316 S.E.2d 281 (1984).
4. Respondent did not act arbitrarily or capriciously in denying Petitioner's application for reinstatement of his teaching license in North Carolina.
5. Respondent did not unlawfully deprive Petitioner of any property to which he is entitled.
6. Respondent has not prejudiced the rights of Petitioner nor acted arbitrarily or capriciously.

Based on the foregoing findings of fact and conclusions of law, the undersigned makes the following:

FINAL DECISION

The preponderance of evidence produced in this contested case hearing demonstrates that Respondent's decision denying Petitioner's application for reinstatement of his teaching license is supported by that evidence and is AFFIRMED.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 30th day of December, 2013.

Beecher R. Gray
Administrative Law Judge