

STATE OF NORTH CAROLINA
COUNTY OF ROWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EDC 01828

Crystal A Kelly Petitioner, v. Department Of Public Instruction Respondent.	FINAL DECISION
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This matter came on to be heard before Administrative Law Judge Selina M. Brooks on October 27, 2015, and March 22-23, 2016 in Salisbury, North Carolina.

APPEARANCES

For the Petitioner: Juanita Boger-Allen, Esq.
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For the Respondent: Tiffany Y. Lucas
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EXHIBITS

Petitioner's Exhibits ("Pet. Ex.") 1 through 19 were admitted.

Respondent's Exhibits ("Resp. Ex.") 1 through 24 were admitted.

WITNESSES

For Petitioner: Crystal A. Kelly, Petitioner
John Broadway, retired Officer, Albemarle Police Department

For Respondent: Marcia Schwartz Davis, Member, Ethics Advisory Committee, DPI
Vicki Lee Calvert, HR Director, Stanly County Schools ("SCS")
Leigh Hayes, EC Director, SCS
Markita Hamilton, Teacher Assistant, SCS

Nancy Watkins, Teacher Assistant, SCS
Katie Cornetto, Chair, Ethics Advisory Committee, DPI
Sandra Carter, Associate Superintendent, SCS
Bernard Waugh, Member, Ethics Advisory Committee, DPI
Jim Kirkpatrick, Member, Ethics Advisory Committee, DPI
Christopher Boe, Member, Ethics Advisory Committee, DPI
Nadine Ejire, Assistant Section Chief, Licensure Section, DPI

ISSUE

Whether Petitioner's North Carolina teaching license should have been revoked.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (ALJ) makes the following Findings of Fact. In making these findings of fact, the ALJ has weighed all the evidence and has assessed the credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case. A transcript of the testimony that was received on October 27, 2015 was available to the Undersigned for writing this decision and is referenced herein as "Tr." A transcript was not requested by the Parties for the testimony received on March 22-23, 2016 and, therefore, the Undersigned has relied upon her notes and that testimony is referenced herein as "Testimony".

FINDINGS OF FACT

1. Petitioner was awarded an Initial Provisional teaching license by Respondent on February 23, 2009. (Resp. Ex. 3) After completing all program requirements on July 29, 2009, Petitioner was awarded a Standard Professional 1 (initial) license with an expiration date of June 30, 2012. (Resp. Ex.(s) 4 & 6)
2. Petitioner was also advised by letter, dated July 29, 2009, of the requirements for the conversion of her Standard Professional I license ("SP I") to a Standard Professional II license ("SP II"). (Resp. Ex. 5)
3. In the fall of 2012, Petitioner made inquiries to her former employing school system, Stanly County Schools ("SCS"), and to the North Carolina Department of Public Instruction ("DPI") concerning how she could have her expired North Carolina teaching license reinstated. (Resp. Ex. 11)
4. Petitioner was notified by SCS that the school system would not provide a letter of recommendation to have her teaching license reinstated. (Resp. Ex.(s) 12, 13)
5. On April 16, 2014, SCS notified DPI Licensure staff that the school system had recently received inquiries from the Petitioner about her teaching license, but that the school

system was not recommending conversion of Petitioner's SP I to a SP II because Petitioner failed to successfully complete the North Carolina Beginning Teacher Support Program ("BTSP") and evaluation process. (Resp. Ex.(s) 14, 15)

6. Petitioner failed to successfully complete the BTSP and evaluation process because she had been dismissed from her teaching position with SCS, effective April 26, 2012. (Resp. Ex. 8, p. 40)

7. On April 17, 2014, Respondent notified Petitioner that her SP I would not be converted to a SP II because she had not completed the BTSP. (Resp. Ex. 16)

8. Petitioner made a journal of her telephone conversations concerning reinstatement of her teaching license. (Pet. Ex. 13; Testimony)

9. On May 23, 2014, Petitioner challenged the decision to deny her a SP II by filing a petition for a contested case hearing (Kelly v. DPI, 14 EDC 03803) with the Office of Administrative Hearings. (See Resp. Ex. 17)

10. On June 13, 2014, Petitioner was notified by DPI that her SP I would not be converted to a SP II due to her not completing the BTSP. (Pet. Ex. 10)

11. During the discovery period for that contested case (14 EDC 03803), Respondent sent a letter to Petitioner, dated July 14, 2014, notifying her that Respondent had received allegations concerning Petitioner's conduct as an EC teacher while employed by SCS and that Respondent would be conducting an investigation which could lead to possible disciplinary action against Petitioner's expired North Carolina teaching license, including revocation. Petitioner was invited to attend a meeting of the State Superintendent's Ethics Advisory Committee ("Ethics Committee") on September 12, 2014 concerning the allegations. (Resp. Ex. 18)

12. The Ethics Committee is composed of professional educators appointed by the State Superintendent of Public Instruction, Dr. June St. Clair Atkinson, to review applications for a teaching license where the applicant has indicated he or she has a prior conviction and/or has had a license revoked or suspended, or where questions or issues concerning a teacher's ethical fitness to teach have been brought to the attention of the State Board of Education office. (Resp. Ex. 18; Tr. pp. 122-123)

13. On July 21, 2014, Petitioner submitted a request to the Licensure section at DPI to have her expired license validated. In response to a question on the Licensure Update form about whether the Petitioner had ever had a license revoked or suspended by any state or other governing body, Petitioner truthfully indicated "no." Petitioner, however, did not indicate that the Ethics Committee was presently considering whether disciplinary action should be taken on her teaching license and that she had been invited to appear before the Ethics Committee. (Pet. Ex. 11; Resp. Ex. 19)

14. On September 5, 2014, the contested case regarding denial of a SP II (14 EDC 03803) was dismissed for Petitioner's failure to prosecute her case. (Resp. Ex. 17) Accordingly, Petitioner's SP I, which expired on June 30, 2012, was not renewed or reinstated.

15. Petitioner was interviewed by members of the Ethics Committee on September 12, 2014. She denied all allegations that she had engaged in any misconduct while employed at SCS and stated that the criminal charges brought against her had been dismissed. (Tr. pp. 125-131) After reviewing the relevant documents and information presented by the Petitioner, the Ethics Committee deferred making a recommendation pending receipt of additional information and documentation. (Tr. pp. 138, 144-145; Pet. Ex. 19 p. 93; Resp. Ex. 20)

16. Subsequently, Petitioner submitted additional documentation to be considered by the Ethics Committee, including documentation that the charge of criminal assault against a child under the age of 12 was dismissed by the district court. (Pet. Ex.(s) 1, 5 & 8

17. Additional documentation also was obtained from SCS which had been collected by SCS prior to Petitioner's termination in 2012:

- Several statements from Leigh Hayes, EC Director at East Albemarle Elementary School, who had observed Petitioner in the classroom and contemporaneously recorded her observations and identified issues concerning Petitioner's teaching methods and conduct. (Resp. Ex. 8 pp. 12, 13, 14, 15, 17 & 24)
- Statement from Ariana King, a substitute who worked in Petitioner's classroom on multiple days, alleged observing Petitioner physically and verbally abusing students. (Resp. Ex. 8 pp. 18-19)
- Statements from four employees that they observed Petitioner verbally abuse a student. (Resp. Ex. 8 pp. 20 & 25)
- Statements from Markita Hamilton, a Teacher Assistant, who personally observed Petitioner's abusive behavior toward a student. (Resp. Ex. 8 pp. 21 & 34)
- A written statement from a parent, complaining that Petitioner was abusing children in her classroom. (Resp. Ex. 8 p. 23)
- Letter from SCS Superintendent Samuel A. DePaul, dated February 14, 2012, suspending Petitioner for February 14-20, 2012 based upon Petitioner's conduct, and Petitioner's written Response. (Resp. Ex. 8 pp. 26, 28-31)
- Professional Development Plan, dated February 22, 2012. (Resp. 8, pp. 36-38)
- Letter from Superintendent DePaul, dated April 26, 2012, confirming a discussion with Petitioner concerning a text message which was referred to the Albemarle Police Department and the Department of Social Services, and terminating her employment with SCS. (Resp. Ex. 8 p. 40)

- SCS recommendation of non-renewal of Petitioner’s license. (Resp. Ex. 8 p. 41)

18. On or about September 25, 2014, a DPI staff person erroneously issued the Petitioner a new SP I license. (Pet. Ex. 12)

19. Nadine Ejire, Assistant Section Chief of Respondent’s Licensure Section, testified that this SP I license was issued in error because SCS did not recommend conversion to SP II because Petitioner did not complete the evaluation process. (Resp. Ex. 15) In July of 2012, Cabarrus Charter School had requested an extension of Petitioner’s SP I license and such requests are usually granted. (R. Ex. 19) She did not notify Petitioner that its issuance was improper and the Ethics Committee was not notified that a SP I license was issued. (Testimony)

20. At its regularly scheduled meeting on December 12, 2014, several of the Ethics Committee members who attended the September meeting at which Petitioner’s case was considered the first time also attended. (Resp. Ex. 21)

21. After reviewing the relevant documents and information, including the documentation submitted by both Parties after the September meeting, the Ethics Committee voted unanimously to recommend to Dr. Atkinson that Petitioner’s teaching license be revoked based on the Petitioner’s abusive behavior towards students as outlined in the SCS Superintendent’s letters to Petitioner, dated February 14, 2012 and April 26, 2012. (Pet. Ex. 19 p. 94; Resp. Ex. 21)

22. Dr. Atkinson agreed with the Ethics Committee’s recommendation and initiated revocation proceedings on January 9, 2015. (Resp. Ex. 22)

23. Petitioner appealed the decision to revoke her teaching license by filing the within petition for contested case hearing with the Office of Administrative Hearings. (Resp. Ex. 23)

24. At the contested case hearing before the Undersigned, Petitioner denied all allegations that she had engaged in any misconduct, specifically:

- Petitioner denied any verbal or physical abuse towards students while she was employed by SCS. (Tr. p. 35)
- Petitioner denied allegations that she hit a student with a plastic bat, claiming that the Teacher Assistant who made this allegation wanted her job. (Testimony; see also Resp. Ex. 21)
- Petitioner testified that she received two evaluations at East Albemarle Elementary School which rated her as “Proficient” with two to three areas rated as “below”. (Tr. p. 32)
- When asked if she had ever been disciplined, Petitioner testified that “[i]n all the years I’ve worked in education, I’ve never had a writeup [sic].” (Tr. p. 32)

- Petitioner denied that she “slammed” a student. (Testimony)
- Petitioner denied that she sent the text message to Nancy Watkins. (Testimony)
- Petitioner testified that while she was employed by SCS, she did not receive any complaints from parents and that parents were “ecstatic about the job that I did with their students.” (Tr. p. 47)

25. When Petitioner was observed by Principal Rhonda Gainey on November 15, 2011, she was rated “Accomplished” in 3 areas, “Proficient” in 12 areas, and “Developing” (a rating below Proficient) in 8 areas. (Pet. Ex. 14)

26. On March 29, 2012, Petitioner was observed by Dr. Carter who completed a Rubric For Evaluating Teachers based upon her observations. Dr. Carter rated Petitioner as “Proficient” in 13 areas and “Developing” in 30 areas. (Pet. Ex. 9)

27. Petitioner is employed by Aristotle Preparatory Academy and for the 2014-2015 school, she received evaluations with ratings of “Proficient”, “Accomplished” and “Distinguished”. (Pet. Ex.(s) 15, 16, 17 & 18)

28. Multiple witnesses testified at the hearing in this matter concerning Petitioner’s mistreatment of students while employed by SCS.

29. Vickie Calvert was Director of the SCS Elementary and Middle Schools during the time Petitioner was working at East Albemarle Elementary School. Among her responsibilities, she was Coordinator for Beginning Teachers and was involved with developing a “directed” professional development plan for improving Petitioner’s instructional skills. (Tr. pp. 178-179, 190, 198-200, 214-215; Resp. Ex. 8 pp. 36-40) Petitioner did not complete all of the required instructional trainings, courses or classes. (Tr. pp. 193-194, 221-224) Petitioner also failed to complete the BTSP because she did not achieve a rating of “Proficient” or better on all standards on her evaluations and she did not receive a summative evaluation. (Tr. pp. 225-226)

30. Leigh Hayes had been employed by SCS as Exceptional Children’s Director for 16 years, is familiar with Petitioner and observed her in the classroom. (Resp. Ex. 8 pp. 12, 13, 14, 15, 17, 24) She received numerous complaints about Petitioner concerning her interactions with students. (Testimony)

31. Markita Hamilton, Petitioner’s former Teacher Assistant at SCS, testified that she once observed Petitioner “slam” a child onto the floor and, on other occasions, she observed Petitioner yelling at her students, some of whom were non-verbal. She personally observed Petitioner’s verbal and physical abuse of student in her classroom and reported her observations to the school principal. (Testimony; see also Resp. Ex. 8 pp. 2-22)

32. Nancy Watkins had been employed as a Teacher Assistant. She testified that she received a text message on her cellphone from Petitioner which stated: “I took his ass n ur room hit him with the blue bat jacked him up twice then went n bathroom & shut the door. I told him

its me & him from now no. He's scared now." (Testimony; see Resp. Ex. 8 p. 40) She reported this text message to Principal Gainey. (Testimony)

33. Katie Cornetto is in-house counsel for Respondent and is Chair of the Ethics Committee. She testified concerning the documents reviewed by the Ethics Committee. She concurs with the decision to revoke Petitioner's license because teachers are held to high standards of conduct and past conduct raises concerns for recurrence, even if a teacher has received a positive evaluation since the incidents occurred. (Testimony)

34. SCS Associate Superintendent Carter supports the decision to revoke Petitioner's license and would not recommend licensing Petitioner to work with children. Dr. Carter testified concerning Petitioner's conduct during her employment with SCS in 2012. Petitioner's five-day suspension without pay in February 2012 was based on the following conduct: allowing students to walk unaccompanied to the office for medication; use of profanity; use of cell phone during instructional time; allowing visitors into the school without checking them in at the main office; derogatory remarks made to students; lack of organized and planned instruction during the school day. (Testimony; Resp. Ex. 8 pp. 26 & 40) Dr. Carter also testified about the investigation by SCS into the report that Petitioner sent a text message to a colleague indicating that she had hit a child in a school bathroom and that Petitioner had been observed by a different colleague physically hurting a child. (Testimony)

35. Bernard Waugh is a member of the Ethics Committee and participated in both meetings. He testified that the committee focuses on ethics and not on quality of teaching. The committee reviewed all documentation provided and considered Petitioner's explanations concerning the allegations. He agrees with the vote to revoke Petitioner's license. (Testimony)

36. James Kirkpatrick is a member of the Ethics Committee and attended the meeting in December. He reviewed documentation from the September meeting as well as all information provided at the December meeting. He agrees with the decision to revoke Petitioner's license. (Testimony)

37. Christopher Boe is a member of the Ethics Committee and attended the September meeting. He considered all documentation provided and oral presentations made, and concurs with the decision to revoke Petitioner's license. (Testimony)

38. Petitioner called retired Albemarle Police Officer John Broadway to testify concerning his investigation of the allegations which resulted in his issuance of a Warrant For Arrest for the offense of assault on a child under 12 years of age. (Pet. Ex. 5) He obtained the statement from Markita Hamilton. (Pet. Ex. 6) Mr. Broadway testified that Ms. Hamilton's statement that Petitioner "dragged" the child (Pet. Ex. 6) is different language from the statement that she gave to SCS on April 24, 2012 in which she states Petitioner "carried" the child (Resp. Ex. 8 p. 34). Prior to issuance of the warrant, he reviewed the statements with Ms. Hamilton. He testified that it is common for there to be differences between statements. (Testimony)

39. After investigation by SCS into the incidents set forth above, Petitioner was dismissed from her teaching position on or about April 26, 2012. (Resp. Ex.(s) 8 p. 40 & Ex. 9)

40. The Undersigned finds the testimony of Nadine Ejire, Vickie Calvert, Leigh Hayes, Markita Hamilton, Nancy Watkins, Katie Cornetto, Sandra Carter, Bernard Waugh, James Kirkpatrick, Christopher Boe and John Broadway to be credible.

41. The Undersigned finds the testimony of Petitioner to be not credible.

CONCLUSIONS OF LAW

1. The State Board of Education 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)

2. Teachers are required in this State, by both 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 Bd. of Educ.*, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984)

3. 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)

4. The burden is on Petitioner to demonstrate, by a preponderance of the evidence, that the Respondent erred in revoking her teaching license. *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 507 S.E.2d 272 (1988)

5. Petitioner's conduct bears a "reasonable and adverse relationship" to the Petitioner's ability to perform her professional duties in an effective manner.

6. Petitioner's conduct is not consistent with the high standards of conduct expected of teachers in this State. *See Faulkner v. Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984).

7. Respondent did not act arbitrarily or capriciously in revoking Petitioner's license to teach in North Carolina.

8. Respondent did not and has not unlawfully deprived Petitioner of any property to which she is entitled.

9. Respondent has not prejudiced the rights of Petitioner nor acted arbitrarily or capriciously.

BASED UPON the foregoing, the Undersigned makes the following:

DECISION

Petitioner has not met her burden of proving by the preponderance of the evidence that Respondent erred in revoking her teaching license and, therefore, the Petition for Contested Case hereby is **DENIED**.

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 11th day of May, 2016.

Selina M Brooks
Administrative Law Judge