

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 EDC 01795

<p>Sandra Elliott Petitioner,</p> <p>v.</p> <p>Department of Public Instruction Respondent.</p>	<p>FINAL DECISION</p>
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This matter was heard before Administrative Law Judge Melissa Owens Lassiter on September 15, 2022 in Fayetteville, North Carolina pursuant to N.C.G.S. § 150B-23 and Petitioner's petition for a contested case hearing to appeal Respondent's decision to deny Petitioner's request to reinstate Petitioner's North Carolina Teaching License.

APPEARANCES

For Petitioner:	Sandra Elliott, <i>Pro Se</i>
For Respondent:	Forrest Fallanca Assistant Attorney General North Carolina Department of Justice

ISSUE

Whether Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by rule or law, in denying Petitioner's request to reinstate her North Carolina Teaching License?

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:	1 and 2 (illustrative purposes only)
For Respondent:	1 - 23

WITNESSES

For Petitioner: Sandra Elliott

For Respondent: Brandon Walker
Marcia Davis
Jennifer Poulsen

FINDINGS OF FACT

UPON careful consideration of the sworn testimony of witnesses presented at hearing, stipulations by the parties, documents admitted into evidence, having weighed all the evidence and assessed the credibility of the witnesses by the appropriate factors for judging credibility, including but not limited to the demeanor of each witness; any interest, bias or prejudice each witness may have; the opportunity for each witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of each witness is reasonable; whether such testimony is consistent with all other believable evidence in the case, and upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable rules and laws, the undersigned finds as follows:

Background Information

1. Petitioner Sandra Elliott ("Petitioner") is a former licensed teacher in North Carolina.
2. In 2009, Petitioner owned and operated Learning Links Educational Network Services Center, Inc. ("Learning Links"), a business which provided occupational, speech, and behavioral services to children with developmental delays or anger management problems through its employees or independent contractors. Learning Links primarily billed and received payments from Medicaid and Tricare, health care benefit programs for the provision of those services. Learning Links also provided tutoring services.
3. On September 10, 2010, US District Court Judge Terrence W. Doyle entered a Judgment against Petitioner, pursuant to a guilty plea by Petitioner, to the crime of Health Care Fraud and Aiding and Abetting. (T p 20; Resp Ex 10). Specifically, Learning Links committed Health Care Fraud by billing Medicaid and Tricare for services not rendered, employed non-licensed personnel, and provided unwarranted therapy. When Petitioner pled guilty, she forfeited the following items: 2008 Lexus, a 2008 Chrysler, a 2008 recreation vehicle, and over \$200,000. (T p 21; Resp Ex 10, p 7).
4. Judge Doyle sentenced Petitioner to 120 months in prison and ordered Petitioner to pay \$1,885,196.40 in restitution. (T pp 20-21; Resp Ex 10, pp 2, 5)
5. Petitioner's North Carolina teaching license expired in 2011 while Petitioner was incarcerated.

6. On January 23, 2019, Petitioner was released from prison after serving 8 years. (Resp. Ex. 12) Thereafter, Petitioner was on supervised release for 3 years and paid \$50.00 per month in restitution. (Resp Ex 10, p 3).

Petitioner's Request for Reinstatement

7. Following her release, Petitioner applied to have her teaching license reinstated by Respondent.

8. On October 11, 2019, Petitioner met with the North Carolina Educator Ethics Advisory Committee ("Ethics Committee"). (*Id.*)

9. The purpose of the Ethics Committee is to investigate licensure issues and then make a final recommendation to the North Carolina State Superintendent ("Superintendent"). (T p 35) Following the meeting, the Ethics Committee recommended that Petitioner's request for reinstatement be denied.

10. On January 24, 2020, Superintendent Catherine Truitt notified Petitioner by letter that she was denying Petitioner's request for reinstatement of her teaching license. Superintendent Truitt informed Petitioner that the requirements of N.C.G.S. § 93B-8.1 were relevant to her case. (Resp Ex 13) This statute describes the permissible uses of a person's criminal history when they are an applicant for licensure from an occupational licensure board. (Resp Ex 4)

11. In her letter, the Superintendent advised Petitioner of the specific requirements of N.C.G.S. § 93B-8.1 which applied to her case.

a. N.C.G.S. § 93B-8.1 (b1)(1) allows the board to consider "[t]he level and seriousness of the crime," and § 93B-8.1(b1)(5) permits a committee to consider "[t]he nexus between the criminal conduct and the prospective duties of the applicant as a licensee." (Resp. Exs 4, 13).

b. Superintendent Truitt specially noted that Petitioner was convicted of the felony of fraud by defrauding Medicaid and Tricare by falsely billing for services provided to students, families, and educators.

c. Superintendent Truitt found that "reinstatement of Petitioner's teaching license would allow Petitioner to provide services to persons in the very same category of clients whom you were convicted of defrauding through the Medicaid and Tricare programs" and that "is totally inappropriate." (Resp Ex 13)

d. Pursuant to N.C.G.S. § 93B-8.1(b1)(6), Superintendent Truitt also considered the length of Petitioner's sentence, and that Petitioner was still on probation at the time of her reinstatement request. (Resp. Exs 4, 13)

12. Due to the seriousness of Petitioner's crime and the nexus between the criminal activity and Petitioner's possible duties as a teacher, the Superintendent denied Petitioner's request for reinstatement. (Resp Ex 13) Superintendent Truitt noted that Petitioner's statements to the Ethics Committee that her conviction had nothing to do with her teaching license was "further evidence of your lack of awareness of the nexus between the crimes for which you were convicted and the populations you now wish to serve." Further, Superintendent Truitt indicated that the Ethics Committee determined that Petitioner violated the N.C. Standards of Professional Conduct in 16 NCAC 06C .0602. (Resp Ex 13)

Contested Case

13. On August 18, 2020, Governor Roy Cooper issued Executive Order No. 158 ("EO"). The EO No. 158 covered "Employment Decisions" made by a "State Agency." "Employment Decisions" was defined as "[a]n employer decision regarding a position requiring a job application." (Resp Ex 16)

14. Petitioner believed that EO No. 158 also applied to licensure decisions. On July 5, 2021, she wrote a letter to Respondent requesting a reconsideration of the Superintendent's decision to deny Petitioner's request to reinstate her license. (Resp Ex 1)

15. On February 11, 2022, Petitioner met with the Ethics Committee for a second time. During that meeting, as well as her during her testimony at hearing, Petitioner stated she was not trying to "relitigate [her] conviction or to invalidate the conviction." (T p 12; Resp Ex 21) Rather, she had requested this second appeal because she believed that EO No. 158 would "override a lot of [the] things" that led the Superintendent to deny her initial request for reinstatement. (T pp 17-18; Resp Ex 21)

16. After considering Petitioner's testimony and the material she submitted, the Ethics Committee voted unanimously to recommend that Petitioner's request to reinstate her license be denied. (Resp Ex 21)

17. As of May 19, 2022, Petitioner still owed \$1,735,189.94 in restitution. (T p 22).

18. Brandon Walker is the agency legal counsel for the State Board of Education ("SBE") and served as the facilitator of the Ethics Committee meeting with Petitioner. (T p 34) At hearing, Mr. Walker described the steps that he and another employee of DPI, Tiffany Goodson, took to organize and facilitate the meetings of the Ethics Committee. (T pp 34-35) Mr. Walker explained that the Ethics Committee does not make a final decision; rather, it is an investigatory committee that is charged with meeting with the applicant and then making a recommendation to the Superintendent. (T p 35)

19. Mr. Walker opined that EO No. 158 is not relevant to either the Ethics Committee decision or the Superintendent's decision on licenses. (T p 42; Resp Ex 1)

Rather, EO No. 158 specifically deals with employment decisions by State agencies. In this case, Petitioner was applying to have her license reinstated; she was not applying to the NC Department of Public Instruction for employment. (T p 43)

20. In evaluating whether to reinstate Petitioner's license, the Ethics Committee reviewed, among other things, 16 NCAC 06C .0372(a)(1), 16 NCAC 06C .0376, and N.C.G.S. §93B-8.1. Reading these rules and statute together allow the SBE to deny an application for reinstatement due to a criminal conviction after evaluating "[t]he level and seriousness of the crime," and "[t]he nexus between the criminal conduct and the prospective duties of the applicant as a licensee." (T pp 46-48; Resp Exs 4-6)

21. In making their recommendation, the Ethics Committee also considered the State Standards of Professional Conduct for Educators. (T pp 63-64; Resp Ex 8)

22. During the Ethics Committee's review of Petitioner's application, they reviewed the factors in N.C.G.S. §93B-8.1. (T p 48)

23. Marcia Davis was a member of the Ethics Committee that reviewed Petitioner's reinstatement request. Ms. Davis has an undergraduate degree in elementary education, a Master's degree in Education and a Ph.D. in Curriculum Instruction, all from UNC-Chapel Hill. She worked as a teacher in Wake County for five years. For the last 20 years, Ms. Davis has held various roles at three local universities. (T p 58) Since 1989, she has held a North Carolina teaching license in elementary education. For the last 8 years, she has served on the Ethics Committee. (T pp 59-60)

24. The Ethics Committee is comprised of certified teachers, certified principals, human resource officers from local school districts, and members of higher education. (T pp 60-61)

25. Prior to meeting with Petitioner, Ms. Davis reviewed the documents Petitioner submitted to the Ethics Committee: a recommendation letter, a letter from Petitioner's probation officer, and Governor Cooper's EO No. 158. (T p 64)

26. At the hearing, Petitioner presented a letter from State Rep. Marvin Lucas (Pet Ex 1) to illustrate her testimony. Petitioner had not submitted such letter to the Ethics Committee and thus, such letter was not a part of their decision.

27. At hearing, Ms. Davis opined that the EO No. 158 did not apply to the Ethics Committee because it did not apply to licensure decisions; it only applied to employment decisions, and in regard to teachers, employment decisions are made by local education agencies. (T p 74)

28. Instead, the Ethics Committee focused on the nexus between Petitioner's crime and her perspective duties if her license was reinstated. Prior to her conviction, Petitioner was in a cross-categorical resource teaching position, which meant that she played a role in coordinating the necessary participants to develop individual education plans for students, which would include various health care professionals. Thus, there

was a serious concern about the overlap of those duties and Petitioner's role in the events that led to her conviction for health care fraud. (T pp 68-69)

29. In their discussions, the Ethics Committee discussed the significant overlap between Petitioner's crimes and her role as a teacher, as well as the fact that she was still on probation. (T pp 70-71) Additionally, the Ethics Committee considered Petitioner's apparent unwillingness to take responsibility or express any remorse over her actions. (T pp 77-78)

30. After the Committee meeting, Ms. Davis and all members of the Committee voted unanimously to deny Petitioner's request for reinstatement based on the seriousness of Petitioner's crime and the nexus between the criminal conduct and her perspective duties as a CCR licensee. (T p 78)

31. Jennifer Paulson also served on the Ethics Committee. Ms. Paulson holds a Master's degree in Special Education from UNC-Charlotte and holds a State license as an Exceptional Children's ("EC") director. She has worked as an educator in North Carolina for 24 years and has served on the Ethics Committee for three years. (T pp 85-86)

32. Ms. Paulson confirmed that Petitioner had reapplied to the Ethics Committee due to her belief that EO No. 158 should be considered in the evaluation. (T p 88)

33. Based on her role as an EC teacher, Ms. Paulson opined that Petitioner serves not only as a teacher but as a case manager for the students. As a case manager, Petitioner would be required to conduct proper record keeping to ensure compliance with federal and state law and would be required to coordinate services with various medical providers. (T pp 90-91) Ms. Paulson opined that since Petitioner would likely be responsible for up to 50 students at a time, Petitioner would be required to act in a timely and truthful manner with the necessary parties to ensure that a local school district complied with required deadlines that would allow them to receive federal and state funding. Ms. Paulson had significant concerns that Petitioner would act in a timely and truthful manner in that role. (T p 91)

34. Based on all of the statutory factors in N.C.G.S. § 93B-8.1, a review of the documents, her interview with Petitioner, and sitting on the Ethics Committee, Ms. Paulson saw cause to recommend denial of Petitioner's request for reinstatement of her license. She confirmed that the Ethics Committee as a whole recommended denial of Petitioner's request for reinstatement. (T pp 100-101)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties, and this contested case. N.C.G.S. § 150B-23; 16 NCAC 6C .0312(c).

2. To the extent the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they should be so considered without regard to their given labels. *City of Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E. 2d 600, 604 (1946).

3. N.C.G.S. § 150B-34(a) provides that an Administrative Law Judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and experience of the agency with respect to facts and inferences within the specialized knowledge of the agency.

4. An ALJ need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).

5. In educator licensure cases, Petitioner bears the burden of proving at an administrative hearing, by a preponderance of the evidence, that he or she is entitled to relief from the action of the administrative agency. *Richardson v. N.C. Dept. of Pub. Instr.*, 199 N.C. App. 219, 228, 681 S.E.2d 479, 484 (2009); N.C.G.S. §§ 150B-25.1(a); 150B-34(a).

6. The “State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support . . . and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.” N.C. Const. Art. IX, § 5.

7. A crucial part of the State Board of Education’s successful supervision and administration of our public school system rests in its licensing of qualified individuals who uphold our State’s standards for the teaching profession.

8. The State Board of Education has complete control over the licensing of professional educators, subject to the requirements found in N.C.G.S. §§ 115C-270.1-115C-270.35. N.C.G.S. § 115C-270.5.

9. Under the North Carolina Constitution, the Superintendent of Public Instruction is the Secretary and Chief Administrative Officer to the State Board of Education. N.C. Const. art. IX, § 4. Consistent with this constitutional framework, the Superintendent has all those powers and duties delegated to him or her by the State Board of Education. N.C.G.S. § 143A-44.3. The State Board of Education delegated to the Superintendent the authority to issue all disciplinary documents related to teacher licenses, including those documents that deny, revoke, or suspend a teacher’s license. SBE Policy ID GOVR-005.

10. Pursuant to N.C.G.S. § 93B-8.1, “a board may deny an applicant on the basis of a conviction of a crime only if the board finds that the applicant’s criminal conviction history is directly related to the duties and responsibilities for the licensed occupation.” When making this determination, a board shall must consider, *inter alia*,

“[t]he level and seriousness of the crime” and “[t]he nexus between the criminal conduct and the prospective duties of the applicant as a licensee.” N.C.G.S. § 93B-8.1 (b1)(1,5).

11. Pursuant to 16 NCAC 6C .0376(1), the SBE may grant an applicant’s request to reinstate if “the action that resulted in suspension, revocation, or denial of the license did not involve ... acts of moral turpitude ... or the grounds listed in Rule .0372(1), (3), or (8) of this Section.”

12. 16 NCAC 6C .0372 permits the SBE to suspend or revoke a license for the following reasons:

(1) fraud, material misrepresentation, or concealment in the application for the license; ... (3) conviction or entry of a plea of no contest, as an adult, to a crime if there is reasonable and aversive relationship between the underlying crime and the continuing ability of the person to perform any of their professional functions; ... (8) any other illegal, unethical, or lascivious conduct by a person if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of their professional functions in an effective manner

13. The Standards of Professional Conduct for North Carolina Educators require, among other things, that educators: practice the professional standards of federal, state, and local governing bodies (16 NCAC 6C .0602(b)(1)); serve as positive role models for students, parents, and the community (16 NCAC 6C .0602(b)(2)); not engage in dishonesty, fraud, deceit, or misrepresentation in the performance of professional duties including in an application for licensure and in the evaluation or grading of students (16 NCAC 6C .0602(b)(3)); and not commit any act referred to in G.S. 115C-332 and any felony under the laws of the United States or of any state (16 NCAC 6C .0602(b)(10)). A violation of those standards “shall subject an educator to investigation and disciplinary action by the SBE or LEA.” 16 NCAC 6C .0602(a).

14. Our Supreme Court has stated that our educators must maintain the highest level of personal character and conduct:

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.

Faulkner v. New Bern-Craven Bd. of Educ., 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984).

15. Governor Cooper's Executive Order No. 158 related to employment decisions by state agencies. It has no relation or bearing on licensing decisions by the North Carolina Superintendent of Public Instruction.

16. In 2010, Petitioner pled guilty to Health Care Fraud for defrauding Medicaid and Tricaid in the operation of her business Learning Links. (T P 20; Resp Ex 10). Petitioner was sentenced to 120 months in prison and ordered to pay \$1,885,196.40 in restitution. (T pp 20-21; Resp Ex 10, pp 2, 5) The severity of these crimes easily satisfies the requirements of N.C.G.S. § 93B-8.1 (b1)(1), and given the nature of these crimes, there is a clear nexus to her potential responsibilities as an Exceptional Child teacher.

17. Additionally, Petitioner's actions, as reflected by her past criminal acts, her testimony at trial, her statements to the Ethics Committee, and the documents submitted by Respondent at the hearing, are neither consistent with the high standards expected of educators in this state nor compliant with the requirements of the Standards of Professional Conduct for North Carolina Educators.

18. Petitioner failed to carry her burden of proving that Respondent's denial of her request for reinstatement of her North Carolina educator license deprived her of property or otherwise substantially prejudiced her rights and that, in doing so, Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. N.C.G.S. §§ 150B-23(a); 150B-25.1(a).

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby **AFFIRMS** Respondent's decision to deny Petitioner's request for reinstatement of her North Carolina educator license.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C.G.S. § 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 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.G.S. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C.G.S. § 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.

SO ORDERED, this the 13th day of December, 2022.



Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

Sandra Elliott
9144 Collier's Chapel Church Road
Linden NC 28356
Petitioner

Kimberly D. Potter
N.C. Department of Justice-Attorney General's Office
kpotter@ncdoj.gov
Attorney For Respondent

Zachary Padget
NC Department of Justice
zpadget@ncdoj.gov
Attorney For Respondent

This the 13th day of December, 2022.



Daniel Chunko
Law Clerk
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850