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JAMES TREIER

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BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

IN THE MATTER OF:)
) **Docket No. 07.01-116670J**
JAMES TREIER)

INITIAL ORDER

This contested case hearing came to be heard on June 26, 2012, in Nashville, Tennessee before Administrative Judge Thomas G. Stovall, assigned by the Secretary of State, Administrative Procedures Division, and sitting on behalf of the Tennessee State Board of Education. Ms. Dannelle Walker, General Counsel for the Tennessee State Board of Education, represented the State. The Respondent did not appear and was not represented by counsel.

ENTRY OF DEFAULT

Pursuant to T.C.A. §§ 4-5-307, 49-1-302(a)(5)(A)(ii), and 49-5-108(a), on May 18, 2012, the Petitioner filed a NOTICE OF HEARING AND CHARGES. The Respondent failed to appear for the hearing. Based on the Respondent's failure to appear for the hearing on June 26, 2012, the Petitioner moved for a default pursuant to T.C.A. § 4-5-309.

In support of the motion for default, the Petitioner presented evidence demonstrating that the Respondent was given ample notice of the hearing. Petitioner sent a letter of intent to suspend Respondent's license on March 1, 2012. The green card receipt(s) that accompanied the letter(s) were returned signed by him. Respondent was served with a copy of the NOTICE OF HEARING AND CHARGES via Certified U.S. Mail on May 22, 2012. The original was filed with the Administrative Procedures Division on May 20, 2012. In an email from Respondent to Petitioner dated June 24, 2012, Respondent acknowledged the hearing and indicated that he would be forfeiting his right to a hearing.

It is determined that the Petitioner established proof of service of the NOTICE of HEARING AND CHARGES in compliance with Rule 1360-04-01-.06 of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, Tenn. Comp. R. & Regs. Ch. 1360-4-01-.06. The Respondent did not appear for the hearing. Accordingly, pursuant to T.C.A. §§ 4-5-309 and Rule 1360-04-01-.15, the Respondent is held in Default for failure to appear at the hearing. Pursuant to Rule 1360-04-01-.15(2)(b), the hearing was held as an uncontested hearing.

FINDINGS OF FACT

1. Respondent was at all times pertinent thereunto licensed by the State Board of Education to teach in Tennessee.

2. On September 6, 2011, Respondent resigned his position as Band Director of West Creek Middle School based upon the following allegations:

- a. Respondent failed to document an instrument cleaning fee received from students on collections logs.
- b. Respondent failed to submit said funds as he received them to the school's bookkeeper.
- c. When asked to reproduce receipts for the cleaning of instruments, Respondent could neither produce those receipts nor account for the money he had collected.

3. Testimony from Mr. Bryan Feldman, Principal at West Creek Middle School, indicated that West Creek Middle School already had funds allocated to cover the cleaning of band instruments. The funds that Respondent collected were not authorized and went above those funds allocated for instrument cleaning and were not deposited into that account.

4. In the absence of receipts for the cleaning of instruments and the inability to reproduce the funds collected, Respondent misappropriated the funds he collected from students.

ANALYSIS AND CONCLUSIONS OF LAW

1. The State bears the burden of proof in this matter, by a preponderance of the evidence, to show that the Respondent's license should be disciplined.

2. T.C.A. § 49-1-302 empowers the State Board of Education to adopt policies governing the "qualification, requirements, and standards of and provide the licenses and certificates for all public teachers." It further empowers the Board to approve, disapprove, or amend regulations prepared by the Commissioner of the Department of Education to implement these standards. T.C.A. § 49-1-302(5) and (11).

3. State Board of Education Rule 0520-02-04-.01(9) Denial, Permanent Revocation, and Revocation of License, provides the following:

(b) Denial, Suspension or Revocation of License. The State Board of Education may revoke, suspend or refuse to issue or renew a license for the following reasons:

1. Conviction of a felony,
2. Conviction of possession of narcotics,
3. Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs,
4. Falsification or alteration of a license or documentation required for licensure,
5. Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule, or
6. **Other good cause**. (Emphasis added.)

4. It is concluded that the Board carried its burden of proof by a preponderance of the evidence that the Respondent misappropriated funds collected from students. This conduct constitutes **other good cause** in violation of State Board of Education Rule 0520-02-04-.01(9). Accordingly, the Respondent's license should **be revoked**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this 11 day of July, 2012

Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 11 day of July, 2012

Thomas G. Stovall, Director
Administrative Procedures Division