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Law

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3-30-2005

BOARD OF EDUCATION, Petitioner, vs. MARY  
ANDERSON, Respondent

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3. In 2002, Respondent was employed as a teacher at the LaGrange/Moscow School in Fayette County, Tennessee.

4. Respondent kept a wooden paddle on her desk. She often rapped the paddle against the desk to get the students' attention.

5. On December 18, 2002, as students were preparing to leave the school, two students in Respondent's class became engaged in an altercation.

6. Respondent got up from her desk, with the paddle in her hand, and began walking toward those two students.

7. As she walked, Respondent was swinging the paddle in her hand. As she approached the two students, she attempted to toss the paddle into a crate by the two students but the paddle accidentally hit another student (who was walking in the area) in the forehead.

8. The child received minor injuries to his left brow.

9. Respondent asked the student if he was all right and offered to get ice for the injury but he refused her assistance.

10. Respondent went home. The next morning she filed an incident report.

11. The injured child's grandmother reported the incident to local law enforcement officials the same day as the incident, despite her grandson's telling her that the injury resulted from an accident.

12. Respondent was charged with misdemeanor assault and jailed for 10 days.

13. After sitting in jail during the holidays, while waiting on the return of the county General Sessions Judge, Respondent entered into an Alford plea to a Class A misdemeanor assault charge.

## CONCLUSIONS OF LAW AND ANALYSIS

1. Rule 0520-2-4-.01(9)(b) of the Rules of the State Board of Education states, in relevant part:

[A] person may have a license or certificate revoked upon proof of immoral conduct, conviction of a felony, including conviction on a plea of nolo contendere, improper use of narcotics or intoxicants, conviction of possession of narcotics, discovery of fraudulent misrepresentation of documentation required for licensure or certification, alteration by the educator of the license or certificate, or for other good cause.

2. The facts are not in dispute here. Neither party's proposed findings of fact contradicted the other's; nor did either party file a response to the other's proposed findings as required by this judge in the event they disagreed with any proposed findings presented by the other side.

3. The State's argument in its proposed findings is that "because [Respondent] injured a child, her conduct constitutes good cause for revocation of her license."

4. This judge disagrees. Merely injuring a child by accident is not sufficient cause for revocation of license. Good cause requires an actual intent to injure or an act of such reckless disregard that revocation is appropriate, regardless of intent.

5. There is no doubt Respondent intentionally threw a paddle in the direction of students, striking and injuring one; however, there is no indication she ever intended to throw the paddle at any student. She was only throwing the paddle at a crate by the students.

6. While Respondent did enter a no contest Alford plea to the misdemeanor assault charge, the Sixth Circuit Court of Appeals has defined an Alford plea as an "express[s] willingness to forego trial, but maintaining innocence." U.S. v. Tucker, 925 F. 2d 990, 992 (6<sup>th</sup> Cir. 1991). The Court found that a defendant submitting an Alford plea is one who "plead[s]"

guilty but refuse[s] to admit to facts substantiating that guilt.” U.S. v. Tunning, 69 F. 3rd 107, 111 (6th Cir. 1995). In short, Respondent’s Alford plea is not proof of an assault.

7. Because no intent to injure was proven, the only issue, therefore, is whether Respondent’s action was so reckless as to justify the revocation of her license.

8. Respondent was very credible when she testified that she was trying to toss the paddle in the direction of a bin, and not at any student.

9. Even if Respondent had negligently tossed the paddle into the air and in the direction of students such that there was reasonable likelihood it would hit a student, it is doubtful that this judge would revoke her teaching license if the end result, as in this case, was a mere minor bruise to one student.

10. Here, Respondent did not throw the paddle in a gross or wanton manner. She simply threw it toward a bin and it accidentally struck a student.

11. Respondent has 21 years of experience as a teacher with no discipline on her record. Respondent acted in a negligent manner, but not so unreasonably or egregiously that she should lose her license to teach. This is especially so given the minor injury to the student.

13. Therefore, it is **ordered** that Respondent’s **teaching license/certificate not be revoked**.

This Order entered and effective this   2nd   day of   August   2005.

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Robert Fellman  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 2nd day of August 2005.

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Charles C. Sullivan II, Director  
Administrative Procedures Division