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7-28-2008

DAVID SHEPARD, Respondent.

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BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

IN THE MATTER OF:)
)
DAVID SHEPARD,) **Docket No. 07.01-098980J**
)
Respondent.)

INITIAL ORDER

This contested case came on to be heard on July 25, 2008, in Nashville, Tennessee before Administrative Judge Joyce Grimes Safley, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Board of Education. Mr. Richard Haglund, General Counsel for the Tennessee State Board of Education, represented the State. The Respondent, Mr. Shepard, was present and was represented by Ms. Kate Curlee, Attorney, TEA Legal Services Division.

The issue presented by this hearing is whether or not Respondent Shepard's teaching license should be revoked or suspended by the State of Tennessee due to Respondent's conduct which resulted in his being arrested and charged with patronizing prostitution. The State requests that Respondent's teaching license be suspended for one (1) year.

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that suspension of Respondent's teaching license for one (1) year is disproportionately harsh for the violation committed. It is determined that Respondent's teaching license shall be suspended for a period of six (6) months

from the time Respondent was arrested on February 13, 2008 until August 13, 2008. Accordingly, Respondent's teaching license shall be placed on **SUSPENSION** until August 13, 2008.

This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. At all relevant times, Respondent was duly licensed by the State Board of Education as a teacher in the State of Tennessee.

2. Respondent is 47 years of age. He has been a teacher for twenty-three years. He has a Master's Degree in Education, plus 45 hours of doctoral or post-master's degree hours.

3. Respondent has worked in both public school systems and private school systems. He has taught science, physical education, math, and has served as a coach for various school sports teams.

4. On February 13, 2008, Respondent was arrested in a prostitution sting operation, and was charged with the criminal offense of patronizing prostitution.

5. The criminal charges against Respondent were dismissed upon Respondent's paying court costs and completing a required class pertaining to prostitution and sexually transmitted diseases.

6. The State Board of Education initiated revocation proceedings against Respondent's teaching license pursuant to Rule 0520-2-4-.01 (9)(b)(6) of the *Rules of the Tennessee State Board of Education*

7. At the hearing, Respondent testified that he has an arthritic hip and merely set up an appointment for a therapeutic massage. In light of the fact that Respondent found his “massage service” through “Craigslist” online; agreed to meet his “masseuse” at a Holiday Inn Express in Nashville (when he resides in Mt. Juliet, Tennessee); arrived at the hotel room and paid \$140 in cash; agreed to a “half and half”; and “proceeded to get naked”, Respondent’s testimony is not deemed credible.¹

8. Respondent’s encounter with an undercover police officer was both audio and video taped.

9. At the point in the encounter when Respondent had undressed and paid, Metro-Davidson County police entered the room and arrested Respondent for patronizing prostitution, a misdemeanor.

10. Respondent’s teaching records and evaluations were entered into evidence. The evidence preponderates that Respondent was a good teacher with an excellent record. The records do not reflect any misconduct by Respondent during the course and scope of his employment as a teacher. Respondent has no other arrests on his record.

11. The criminal charges in this matter were dismissed upon Respondent attending a class and paying court costs.

¹ It is judicially noticed that therapeutic massages are available for physical therapy, relaxation, or medical reasons. It is also noted that such therapeutic massages are administered by a licensed massage therapist or physical therapist, and are available at clinics, health spas, physical therapy centers, sports/exercise facilities such as the YMCA, therapeutic massage centers, or in the client’s home. It would be unusual, to say the least, for a “therapeutic massage” to be scheduled for an hour in a hotel room.

CONCLUSIONS OF LAW

1. Rule 0520-2-4-.01 (9)(b) of the *Rules of the Tennessee State Board of Education* provides as follows:

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 a license,
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.** Other good cause shall be construed to include noncompliance with security guidelines for TCAP or successor tests pursuant to T.C.A. §49-1-607, default on a student loan pursuant to T.C.A. §49-5-108(d)(2) or failure to report under part (e). (Emphasis added.)

For purposes of this part (b), “conviction” includes conviction on a plea of guilty, a plea of *nolo contendere* or an order granting pre-trial diversion.

2. The State asserts that a one year suspension of Respondent’s license would be appropriate.

3. A review of Tennessee statutes and case law reveals no statutes or cases which could provide guidance in this matter. This matter is governed

solely by the above referenced *Rules of the Tennessee State Board of Education*.²

4. In this case, Respondent made a mistake in judgment. The State presented no evidence that Respondent had been guilty of misconduct before the incident forming the basis for this matter, and the testimony and evidence supported that he has a good teaching record.

5. There was no evidence presented that Respondent endangered any student or other person at his school. Nor was any evidence presented that Respondent's acts have impaired his ability to teach. Admittedly, Respondent set a less than stellar example for any students who may have learned of his arrest.

6. While it is true that Respondent violated certain State laws and did not contest his prosecution, the charges have been dismissed due to Respondent's meeting certain conditions.

7. Based upon the evidence presented, Respondent has been punished for the above referenced incident. He has attended a prostitution and sexually transmitted diseases class, paid court costs, been suspended from his employment, and suffered the embarrassment of having his arrest made public.

² The statutes and case law reviewed address teacher tenure proceedings and disciplinary actions of local school boards, rather than teacher licensure proceedings. This case is not a "tenure proceeding" nor does it involve a termination /suspension of employment by a local school board.

8. Generally, disciplinary proceedings against licenses in the state of Tennessee are conducted to protect the health, safety, and welfare of the citizens of Tennessee and the public.

9. No evidence was presented that failure to revoke Respondent's teaching license or certificate would place the public's health, safety, and welfare at risk.

10. Notwithstanding the above conclusions, it is determined that Respondent's actions on February 13, 2008, particularly in light of the example which a teacher sets for students, constitute "other good cause" to subject Respondent's teaching license to discipline.

11. Considering all the facts and circumstances of this case, including the fact that Respondent violated a criminal statute of the state and set a poor example for his students, it is determined that the correct discipline to be imposed is a six (6) month suspension of Respondent's teaching license from the date of his arrest.

Accordingly, Respondent's teaching license shall be **SUSPENDED** until **August 13, 2008**.

It is so ordered.

This order entered and effective this 15th day of August, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division

