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November 2015

## James Swafford vs. Education

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**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
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Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

November 20, 2015

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RE: In the Matter of: James Swafford

Docket No. 07.01-130133J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

**BEFORE THE TENNESSEE STATE BOARD OF EDUCATION**

**IN THE MATTER OF:**

**JAMES SWAFFORD VS. EDUCATION**

**DOCKET NO. 07.01-130133J**

**NOTICE**

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **December 7, 2015**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 ROSA PARKS AVENUE, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE TENNESSEE STATE BOARD OF EDUCATION**

**IN THE MATTER OF:**

**JAMES SWAFFORD,**

**Petitioner.**

**DOCKET NO: 07.01-130133J**

**INITIAL ORDER**

This matter was heard on September 2, 2015, at the Offices of the State Board of Education in Nashville, Tennessee, before Administrative Judge Kim Summers assigned by the Secretary of State, Administrative Procedures Division, to sit for the Tennessee State Board of Education (the Board). The Board was represented at the hearing by Staff Attorney Phillip Cramer, Esq. The Petitioner was represented by Samuel Hudson, Esq.

The issue presented in this matter is the Petitioner's application for reinstatement of his Tennessee teacher's license. After consideration of the evidence and argument of the Parties, it is determined that the Petitioner has shown by a preponderance of the evidence that the license should be reinstated. This decision is based upon the following Findings of Fact and Conclusions of Law.

**SUMMARY OF EVIDENCE**

The following individuals presented live testimony at the hearing – James Swafford; Nicole Swafford; Eric Swafford; and Nathan James. James Swafford testified that the impropriety of the relationship with the student “snuck up on him” but ten years later he is now older and wiser and this situation would never happen again. Nicole Swafford, wife of the Petitioner, and Eric Swafford, brother of the Petitioner, testified that the Petitioner does not and would not pose any danger to Tennessee students.

The following sixteen exhibits were entered into evidence – EXHIBIT 1, Certificate of Completion, University of North Florida; EXHIBIT 2, Certificate of Completion, Tennessee

Correction Academy; EXHIBIT 3, Affidavit of Jennifer Mitchell; EXHIBIT 4, Affidavit of Rick Rust; EXHIBIT 5, Affidavit of Vince Pendergrass; EXHIBIT 6, Affidavit of Phillip Asberry; EXHIBIT 7, Affidavit of Kristen Dodson; EXHIBIT 8, Affidavit of Thad Colvard; EXHIBIT 9, Affidavit of Danny Lee; EXHIBIT 10, Affidavit of James Thompson; EXHIBIT 11, Affidavit of Jaime Cates; EXHIBIT 12, Affidavit Howard Upchurch; EXHIBIT 13, Affidavit of Jamie Ruehling; EXHIBIT 14, Responses to Interrogatories; COLLECTIVE EXHIBIT 15, prior actions of the Board; and EXHIBIT 16, Order of Voluntary Surrender.

### **FINDINGS OF FACT**

1. The Petitioner had been a licensed teacher in the State of Tennessee for several years when in 2004 the Petitioner and his family decided to move to North Carolina.
2. The Petitioner obtained his teacher's license in North Carolina where he taught high school and also coached the football team.
3. The Petitioner developed a personal relationship with one of the female students at his school who worked with the football team and also babysat for the Petitioner's children.
4. The relationship was neither romantic nor physical but violated what were considered to be the appropriate boundaries between a teacher and student. No criminal investigation or charges resulted from the conduct.
5. The Petitioner resigned his employment with the school system and, in December 2007, his North Carolina teacher's license was revoked.
6. In 2008, the Petitioner and his family moved back to Tennessee. After learning that the Petitioner's North Carolina teacher's license had been revoked, the Tennessee Board of Education notified the Petitioner of its intent to revoke his Tennessee teacher's license "based on the conduct which led to the revocation in North Carolina."

7. Because he did not have the resources to fight the revocation, the Petitioner chose to voluntarily surrender his license. Although it was called a “permanent surrender” at the time, the Petitioner was not informed, and did not anticipate, that the surrender would forever prevent reinstatement of his license.

8. Many of the Petitioner’s friends, family members, and acquaintances support the reinstatement of his Tennessee teacher’s license.

9. The Petitioner does not intend to return to North Carolina and, therefore, has not requested reinstatement of his North Carolina teacher’s license.

### RELEVANT LAW

1. The Petitioner, as the party seeking to “change the present state of affairs,” has the burden of proof, pursuant to TENN. COMP. R. & REGS. 1360-4-1-.02(7), to prove by a preponderance of the evidence that his Tennessee teacher’s license should be reinstated.

2. Pursuant to TENN. COMP. R. & REGS. 0520-02-03-.09(1), the State Board of Education shall automatically revoke a license upon receipt of:

a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction on a plea of guilty or nolo contendere, conviction for the same or similar offense in any jurisdiction, or conviction for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to such offenses).

3. Pursuant to TENN. COMP. R. & REGS. 0520-02-03-.09(2), the State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

- (a) Conviction of a felony,
- (b) Conviction of possession of narcotics,

- (c) 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,
- (d) Falsification or alteration of a license or documentation required for licensure,
- (e) 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
- (f) Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for TCAP or successor tests pursuant to Tenn. Code Ann. § 49-1-607, default on a student loan pursuant to Tenn. Code Ann. § 49-5-108(d)(2) or failure to report under part (e).

4. Pursuant to TENN. COMP. R. & REGS. 0520-02-03-.09(3)(b), a previously revoked license can be restored under the following conditions –

A person whose license has been denied or revoked under parts (1) or (2) may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and shall be voted on at a regularly scheduled meeting of the State Board of Education. Nothing in this section is intended to guarantee restoration of a license.

### ANALYSIS AND CONCLUSIONS OF LAW

1. The Petitioner voluntarily surrendered his Tennessee teacher's license in lieu of defending an action by the Board for revocation. Since the Petitioner's license was not, in fact, revoked, the requirements for reinstatement of a revoked license do not apply.

2. Had the Petitioner's license actually been revoked, he would have had the opportunity under the law to apply for reinstatement. Therefore, it makes no sense that a voluntary surrender of the license would forever prevent reinstatement notwithstanding the terms of the Order of Voluntary Surrender.

3. The Order of Voluntary Surrender states that the Board intended to pursue revocation based on the Petitioner's underlying conduct, not the resulting revocation of his North

Carolina teacher's license. However, neither the conduct nor the revocation in North Carolina were a basis for revocation of the Petitioner's Tennessee teacher's license pursuant to TENN. COMP. R. & REGS. 0520-02-03-.09(1) and (2) (or the preceding regulation), and, as such, neither the conduct nor the revocation can provide an impediment to reinstatement.

4. There is no other evidence in the record that justifies the denial of the Petitioner's request for reinstatement, especially in light of the many character witnesses who believe reinstatement to be warranted and appropriate.

5. The Petitioner has shown, according to the law and the preponderance of the evidence, that his Tennessee teacher's license is appropriately reinstated.

Accordingly, it is **ORDERED** that the requested reinstatement is hereby **GRANTED**.

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for its citizens.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 20<sup>TH</sup> day of NOV, 2015.



KIM SUMMERS  
ADMINISTRATIVE JUDGE  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 20<sup>TH</sup> day of NOVEMBER 2015.



J. RICHARD COLLIER, DIRECTOR  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE



## **APPENDIX A TO INITIAL ORDER**

### **NOTICE OF APPEAL PROCEDURES**

#### **Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

#### **Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.