

BEFORE THE ARKANSAS STATE BOARD OF EDUCATION

IN RE: DANIEL BRIAN FULLERTON

PLSB CASE NO.: 14-011

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**FINAL ORDER**

On December 11, 2014, during a regular meeting of the Arkansas State Board of Education (“State Board”), the State Board heard and considered Educator Daniel Brian Fullerton’s (“Educator Fullerton”) appeal from the Professional Licensure Standards Board (“PLSB”) Ethics Subcommittee’s (“Ethics Subcommittee”) June 25, 2014, Evidentiary Hearing Determination and Recommendation (“Final Determination and Recommendation”). The PLSB was present by and through its attorney, Jennifer N. Liwo. Educator Fullerton appeared, by and through his attorney, Marcia Barnes.

Upon consideration of the Educator’s Written Exceptions and Brief, the Professional Licensure Standards Board’s Response to Educator’s Written Exceptions and Brief, the arguments of counsel, and all other matters properly before it, the State Board hereby finds and orders as follows:

**I. Substantial Evidence Standard**

Arkansas appellate courts recognize that administrative agencies, by virtue of their “specialization, insight through experience, and more flexible procedures than courts”, are well suited to make determinations on the evidence before them. *Lamar Co., LLC v. Ark. State Hwy. & Transp. Dept.*, 2011 Ark.App. 695, 5-6, 386 S.W.3d 670, 674 (2011). Administrative decisions are upheld “if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion.” *Collie v. Ark. State Med. Bd.*, 370 Ark. 180, 258 S.W.3d 367, 370 (2007). If there is substantial evidence to support the decision, it follows that the decision cannot be arbitrary or capricious. *Id.* 258 S.W.3d at 372.

In determining whether a decision is supported by substantial evidence, the record is reviewed to “ascertain if the decision is supported by relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* 258 S.W.3d at 370. The evidence is given its “strongest most probative force in favor of the administrative agency.” *Id.* “The question is not whether the testimony would have supported a contrary finding, but whether it supports the finding that was made.” *Id.* Even though the evidence would support another conclusion, or even if the preponderance of the evidence would indicate a different result, the agency decision is still affirmed if reasonable minds could reach the conclusion reached by the agency. *Super. Improvement Co. v. Hignight*, 254 Ark. 328, 493 S.W.2d 424, 426-427 (1973).

## **II. The Code of Ethics for Arkansas Educators**

The Code of Ethics for Arkansas Educators (“Code of Ethics”) provides:

**Standard 1:** An educator maintains a professional relationship with each student, both in and outside the classroom.

An ethical violation is “an act or omission on the part of an educator when the educator knew or reasonably should have known that the act or omission was in violation of the code of ethics.” Ark. Code Ann. 6-17-428(a)(3)(A). Ethical violations do not include: (1) reasonable mistakes made in good faith; (2) acts or omissions undertaken in accordance with the reasonable instructions of a supervisor; or (3) acts or omissions under circumstances in which the educator had a reasonable belief that failure to follow the instructions of a supervisor would result in an adverse job action against the educator. Ark. Code Ann. 16-17-428(a)(3)(B).

## **III. Ethics Subcommittee’s Determination and Recommendation**

Following an evidentiary hearing, the Ethics Subcommittee is tasked with determining whether there is reasonable belief that an educator violated the Code of Ethics. Ark. Dept. Ed.-Rules Governing the Code of Ethics for Arkansas Educators, § 7.01.2. The determination must be made by a preponderance of the evidence. *Id.* As defined in Ark. Dept. Ed.-Rules Governing the Code of Ethics for Arkansas Educators, § 5.15:

**Preponderance of the Evidence** is the greater weight of the relevant evidence; superior evidentiary weight that, though sufficient to free the mind wholly from all reasonable doubt, is still sufficient to include a fair and impartial mind to one side of the issue rather than the other. It is determined by considering all of the relevant evidence and deciding which evidence is more credible. A preponderance of the evidence is not necessarily determined by the greater number of witnesses or documents presented. If, on any allegation against an educator, it cannot be determined whether the allegation is more likely true than not true, the allegation cannot be considered to have been proved.

Subsequent to holding an evidentiary hearing on the above styled matter, on June 25, 2014, the Ethics Subcommittee entered its Final Determination and Recommendation in which it found that Educator Fullerton violated Standard 1 of the Code of Ethics when he: (1) threatened a student at the Conway Human Development Center ("CHDC") by saying he would "slap the piss out of" the student; and (2) physically pushed the student into a calming area of the classroom.

The Ethics Subcommittee recommended that the State Board: (i) suspend Educator Fullerton's license for two (2) years; (ii) assess a one hundred dollar (\$100.00) fine; and (iii) require Educator Fullerton to obtain training in classroom management and anger management from a professional provider approved by the Arkansas Department of Education prior to reinstatement of his license.

#### **IV. Findings and Arguments**

Educator Fullerton has been a licensed educator for eleven (11) years and, in those years, has not previously been the subject of disciplinary action. Educator Fullerton began working for the CHDC in March of 2013. The CHDC is a non-traditional public school, which provides education to individuals with developmental disabilities.

At the beginning of his employment, Educator Fullerton received Phase I training on policies and procedures concerning aggressive behaviors and classroom management. Phase I training also included in-service preparation on classroom professionalism, behavior plans, and programs.

While teaching at the CHDC, Educator Fullerton had a student with developmental disabilities in his class. The student was on dialysis and had a catheter (port) in his chest. Due to the catheter (port), the CHDC staff was prohibited from pulling, pushing, or gently nudging the student. As the student would pull the catheter (port) when agitated, Educator Fullerton was in-serviced on the student's medical issues.

The student had an Individual Program Plan (“IPP”), which included a Positive Behavior Support Plan (“PBSP”). The IPP indicated that the student had poor impulse control and was prone to aggression. Learning methods to relieve anxiety resulting in outbursts was a stated goal in the student’s PBSP. Additionally, the PBSP included staff instructions on redirecting the student’s behavior in order to circumvent potential outbursts. Educator Fullerton received additional in-service training when the student, prior to the incident at hand, exhibited aggression towards him.

On August 1, 2013, the student scratched Tanya Taylor (“Taylor”)<sup>1</sup> in an attempt to gain her attention. Educator Fullerton intervened and an argumentative exchange between him and the student ensued. The student, further agitated, pushed on a bookshelf and tried to damage items on the bookshelf. At this point, a frustrated Educator Fullerton told the student, “Look [student], you are eighteen years old now and if you weren’t in this place I could, not would, I could slap the piss out of you.”

Despite immediate realization of his inappropriate conduct, Educator Fullerton’s next step was to pretend cancelling an order for the student’s new chair by phone. The student had eagerly been awaiting the arrival of his new chair for weeks. As such, Educator Fullerton’s faux phone call escalated the situation and increased the student’s agitation. The student responded by spitting in Educator Fullerton’s face and walking out of the classroom. Educator Fullerton followed the student out. When they returned to the classroom, Educator Fullerton shoved<sup>2</sup> the student’s back causing the student to stumble into the calming area.

Educator Fullerton does not dispute that his conduct was inappropriate and a violation of Standard 1 of the Code of Ethics. While he accepts the Ethics Subcommittee’s recommendation of additional training, Educator Fullerton argues that the recommended two (2) year licensure suspension is severe, disproportionate to, and inconsistent with the sanctions imposed on other educators who violated Standard 1.

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<sup>1</sup> At the time of the incident, Taylor was an assistant teacher at the CHDC.

<sup>2</sup> Educator Fullerton claims that he nudged the student. However, the CHDC staff was prohibited from even gently nudging the student. As such, in this case, “nudged” versus “shoved” is a distinction without meaning.

The PLSB counters that the Ethics Subcommittee considers every case on its own merits and that Educator Fullerton's case is distinguishable from the past PLSB cases he referenced. The PLSB highlighted the following as characteristics distinguishing the present case from the past PLSB cases referenced by Educator Fullerton: (1) CHDC is a non-traditional school, which caters to students with developmental disabilities; (2) unlike educators in traditional school settings, Educator Fullerton received specialized training, twice, on managing aggressive behaviors; (3) Educator Fullerton's conduct was both verbally and physically inappropriate; (4) the student involved had behavioral challenges; and (5) the student involved had a catheter (port) in his chest.

While appropriate to weigh the unique circumstances of each case, consistency of action should also be considered. The facts present in Educator Fullerton's case do differ from the referenced PLSB cases. However, those differences do not provide sufficient justification for the Ethics Subcommittee's recommended sanction; especially given the mitigating circumstances<sup>3</sup> and non-existent prior professional misconduct on the part of Educator Fullerton.

The Ethics Subcommittee's finding that Educator Fullerton violated Standard 1 of the Code of Ethics is supported by a preponderance of the evidence. However, the evidence does not support the Ethics Subcommittee's recommendation to suspend Educator Fullerton's license for two (2) years.

#### **V. Sanctions**

The State Board upholds the Ethics Subcommittee's finding that Educator Fullerton violated Standard 1 of the Code of Ethics. The State Board rejects the Ethics Subcommittee's recommendation to suspend Educator Fullerton's license for two (2) years and impose a one hundred dollar (\$100.00) fine.

During the regular session, the State Board moved, seconded, and unanimously agreed to impose the following sanctions: (i) Educator Fullerton's license shall be placed on probation for the 2015-2016

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<sup>3</sup> The mitigating circumstances include: (1) the student previously striking Educator Fullerton prior to the August 1, 2013 incident; (2) the August 1, 2013 incident beginning with the student scratching Taylor, thereby causing Educator Fullerton's intervention; (3) the student pushing on a bookshelf and attempting to damage property during the incident; and (4) the student spitting at Educator Fullerton during the incident. Notation of the mitigating factors should not be construed as excusing Educator Fullerton's conduct.

school year; (ii) Educator Fullerton must pay a seventy-five dollar (\$75.00) fine; and (iii) Educator Fullerton must obtain training in classroom management and anger management from a professional provider approved by the Arkansas Department of Education prior to the conclusion of the probationary period.

IT IS SO ORDERED.

  
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Samuel Ledbetter  
Chairman Arkansas State Board of Education

1-8-2015  
Date