

**BEFORE THE ARKANSAS STATE BOARD OF EDUCATION**

**IN RE: MONA ANNETTE PARKS**

**PLSB CASE NO.: 14-025**

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**FINAL ORDER**

On February 12, 2014, during a regular meeting of the Arkansas State Board of Education (“State Board”), the State Board heard and considered Educator Mona Annette Parks’ (“Educator Parks”) appeal from the Professional Licensure Standards Board (“PLSB”) Ethics Subcommittee’s (“Ethics Subcommittee”) October 3, 2014 Evidentiary Hearing Determination and Recommendation (“Final Determination and Recommendation”). The PLSB was present by and through its attorney, Jennifer N. Liwo. Educator Parks appeared, by and through her attorney, Floyd A. Healy.

Upon consideration of the Educator’s Exceptions and Brief in Support Thereof, the Professional Licensure Standards Board’s Response to Educator’s Exceptions and Brief in Support Thereof, 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.

When determining if 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. Evidentiary Hearing 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 [induce] 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 the October 3, 2014 evidentiary hearing, the Ethics Subcommittee entered its Final Determination and Recommendation in which it found that Educator Parks violated Standard 1 of the Code of Ethics by: (1) having sexual contact, to include oral sex and intercourse, with an eighteen (18) year old male who was a student at the time of the contact; (2) selling and/or providing prescription Xanax pills to a student; (3) having sexual contact, to include oral sex, with a seventeen (17) year old male student at her residence; and (4) providing several hydrocodone tablets to a male student who had been injured and who did not have a prescription for the drug. The Ethics Subcommittee recommended that the State Board permanently revoke Educator Parks' license.

#### **IV. Findings**

##### **A. Timeline**

Educator Parks argues that the Ethics Subcommittee's Final Determination and Recommendation should not be upheld as the timeline provided by Ark. Code Ann. § 6-17-428(k) was not followed. The PLSB counters that the statutory timeline is directory and cannot logically extend so far as to include an evidentiary hearing.

"The basic rule of statutory construction is to give effect to the intent of the General Assembly." *Turnbough v. Mammoth Spring Sch. Dist. No. 2*, 349 Ark. 341, 78 S.W.3d 89, 92 (2002). "In determining the meaning of a statute, the first rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language." *Id.* Statutes are construed so that "no word is left void, superfluous, or insignificant; and meaning and effect [is] given to every word in the statute if possible." *Id.*

“When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory construction.” *Id.* “Where the meaning is not clear, [look] to the language of the statute, the subject matter, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.” *Moore v. Pulaski Co. Spec. Sch. Dist.*, 73 Ark.App. 366, 43 S.W.3d 204, 208 (2001). Also, “look to the object to be accomplished and the purpose to be served by the statute.” *Id.* A statute will not be given a “literal interpretation if it leads to absurd consequences that are contrary to legislative intent.” *Turnbough*, 349 Ark. 341, 78 S.W.3d at 92.

A “statutory time limit is mandatory only if it contains both an express requirement that an action be undertaken within a particular amount of time *and* a specified consequence for failure to comply with the time limit.” *Slusser v. Farm Serv., Inc.*, 359 Ark. 392, 198 S.W.3d at 111 (*citing* 73 Am.Jur.2d *Statutes* §15) (emphasis added).

Ark. Code Ann. § 6-17-428(k) reads as follows:

The ethics subcommittee shall complete its investigation of an ethics complaint and take action:

- (1) Within one hundred fifty (150) days of authorizing the investigation of the ethics complaint; or
- (2) If a hearing is conducted, within one hundred eighty (180) days of authorizing the investigation of the ethics complaint.

Ark. Code Ann. § 6-17-428(k) does not specify a consequence for the failure to comply with the express timeline; nor do any other sections of the statute. As such, the State Board concludes that Ark. Code Ann. § 6-17-428(k) is directory language and does not require an evidentiary hearing to be held within one hundred eighty (180) days of authorizing an investigation.

## **B. Definition of Student**

Ark. Dept. Ed.-Rules Governing the Code of Ethics for Arkansas Educators, § 5.27 defines “student” as “any individual enrolled in the state’s public or private schools from pre-kindergarten through grade 12.” However, Ark. Code Ann. § 6-17-428(p)(1)(D) defines “student” as “a person who is enrolled in a public or private school in any level from prekindergarten through grade twelve (preK-12).”

This definition specifically applies to Standard 1 of the Code of Ethics. Ark. Code Ann. § 6-17-428(p)(1)(D)(2)(A). Additionally, the definition does not require the student to attend an Arkansas school.

As the Ark. Dept. of Ed.-Rules Governing the Code of Ethics for Arkansas Educators is promulgated pursuant to authorities granted by Ark. Code Ann. § 6-17-428, the controlling definition of “student” is that provided by Ark. Code Ann. § 6-17-428(p)(1)(D). The Ethics Subcommittee and the State Board have jurisdiction over the allegations concerning NS, a high school student in Oklahoma.

### **C. Allegations Concerning NS-Sufficiency of the Evidence**

The Ethics Subcommittee found that Educator Parks violated Standard 1 of the Code of Ethics by having sexual contact, to include oral sex, with a seventeen (17) year old, NS, at her residence, and by providing several hydrocodone tablets to NS, who did not have a prescription for the drug, after he was injured.

Educator Parks argues that the evidence does not support a finding that she committed the alleged conduct, and more specifically, does not support a finding that she did anything other than attempt to perform oral sex on NS. At the evidentiary hearing, NS provided the following testimony:

And we were out -- let me turn my volume down -- we were out riding around on the ATV's and we wrecked and I got knocked out and I had serious, serious shoulder pain and I needed medical attention at the time, and I was taken back to her house. I don't remember that because I was knocked out and I don't recall anything except for waking up in the shower and she was the only one in the house. And she said that B and my friend P went to get the ATV and she took me back to the shower 'cause she said that I still had blood on my head and everything. And then she began washing me off and trying to perform oral sex on me and I -- pushed her away and I don't -- I don't recall a lot more after that happening because she gave me what I was told was Tylenol, but it wasn't; it turned out it was hydrocodone.

NS' testimony provides sufficient evidence to support a finding that Educator Parks violated Standard 1 as alleged. With regard to the allegations concerning NS, the State Board finds that the Ethics Subcommittee's findings are supported by a preponderance of the evidence.

#### **D. Allegations Concerning SH-Hearsay Evidence**

While hearsay is admissible in administrative proceedings, hearsay *alone* does not constitute substantial evidence. *Woods v. Daniels*, 269 Ark.App. 613, 599 S.W.2d 435, 437 (1980) (“We recognize hearsay to be admissible in hearings before administrative tribunals, but we find hearsay *alone* not to be substantial evidence”) (emphasis added). As held by the Supreme Court of the United States, “[m]ere *uncorroborated* hearsay or rumor does not constitute substantial evidence.” *Consol. Edison Co. v. Nat. Lab. Rel. Bd.*, 305 U.S. 197, 230 (1938) (emphasis added). However, the *Consol. Edison Co.* ruling was not a “blanket rejection by the Court of administrative reliance on hearsay irrespective of reliability and probative value.” *Richardson v. Perales*, 402 U.S. 389, 407-408, (1971).

After reviewing relevant case law, the State Board concludes that administrative reliance on hearsay is appropriate when, after consideration of all the evidence, the hearsay evidence: (1) has a rational and probative value<sup>1</sup>; (2) is competent<sup>2</sup>; and (3) is corroborated<sup>3</sup>.

Educator Parks was alleged to have violated Standard 1 of the Code of Ethics by having sexual intercourse with an eighteen (18) year old student, SH, and by selling/providing prescription Xanax pills to SH.

During the investigation of the ethics complaint, PLSB Investigator Bryan Presley (“Investigator Presley”) interviewed SH. At the October 3, 2014 evidentiary hearing, Investigator Presley provided hearsay testimony on statements relayed to him by SH during the interview. The record is devoid of any evidence corroborating Investigator Presley’s hearsay testimony. While there are times when hearsay may appropriately be considered by administrative hearing adjudicators, the present case, as it relates to the allegations concerning SH, is not one of them. On the allegations concerning SH, the State Board finds that the Ethics Subcommittee’s findings are not supported by a preponderance of the evidence.

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<sup>1</sup> See e.g. *Richardson v. Perales*, 402 U.S. 389, 390, (1971).

<sup>2</sup> See e.g. *Richardson v. Perales*, 402 U.S. 389, 390, (1971); *Smith v. Everett*, 276 Ark. 430, 637 S.W.2d 537 (1982).

<sup>3</sup> See e.g. *Smith v. Everett*, 4 Ark. App. 197, 629 S.W.2d 309, 310 (1982).

## V. Conclusion and Sanctions

The State Board rejects the Ethics Subcommittee's findings on the allegations concerning SH. The State Board upholds the Ethics Subcommittee's findings on the allegations concerning NS. The State Board rejects the Ethics Subcommittee's recommended sanction of permanent revocation.

During the regular session, the State Board moved, seconded, and by a vote of 5-2, agreed to impose the following sanctions on Educator Parks: (i) probation of license for five (5) years; and (ii) payment of a seventy-five dollar (\$75.00) fine.

IT IS SO ORDERED.

  
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Samuel Ledbetter  
Chairman Arkansas State Board of Education

3-12-15  
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Date