

BEFORE THE ARKANSAS STATE BOARD OF EDUCATION

IN RE: ANGELA LYNN MELTON (PHIFER)

PLSB CASE NO.: 15-088

FINAL ORDER

On December 10, 2015, during a regular meeting of the Arkansas State Board of Education (“State Board”), the State Board considered Educator Angela Lynn Melton’s (“Educator Melton”) written objections to the Professional Licensure Standards Board (“PLSB”) Ethics Subcommittee’s (“Ethics Subcommittee”) July 10, 2015, Evidentiary Hearing Final Determination and Recommendation (“Final Determination and Recommendation”). The PLSB was present by and through its attorney, Jennifer N. Liwo. Educator Melton was unable to appear due to medical reasons.

Upon consideration of Educator Melton’s Written Objections and Brief, the PLSB’s Response to the Educator’s Written Objections and Brief, 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. Evidentiary Hearing Determination and Recommendation

Following an evidentiary hearing, the Ethics Subcommittee is tasked with determining whether 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.

On February 6, 2015, the Ethics Subcommittee authorized an investigation into the allegation that Educator Melton violated: Standard 3 of the Code of Ethics by receiving at least \$880, possibly as much as \$4,000, from a student for Angel Tree donations without informing the administration, and possibly diverted or kept the money.

After the July 10, 2015, evidentiary hearing, the Ethics Subcommittee recommended that the State Board suspend Educator Melton’s license for one (1) year, assess a one-hundred dollar (\$100.00)

fine, and require Educator Melton to complete Tier 2 financial training prior to the reinstatement of her license.

III. The Code of Ethics for Arkansas Educators

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).

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

Standard 3: An educator honestly fulfills reporting obligations associated with professional practices.

Standard 3 covers “those situations where there is an intentional or knowing attempt to deceive or mislead an educational entity.” *Id.* “Honest errors or mistakes or inaccuracies are not intended to be encompassed by this standard.” *Id.*

IV. Findings

A. Finding of a Standard 3 Ethical Violation is Supported by a Preponderance of the Evidence

The preponderance of the evidence supports a finding that Educator Melton violated Standard 3 of the Code of Ethics by receiving at least \$880, possibly as much as \$4,000, from a student for Angel Tree donations without informing the administration, and possibly diverted or kept the money.

Educator Melton asserts that there was insufficient evidence to substantiate a finding that she kept the \$4,000, which she received from a student. However, the allegation against Educator Melton was that she “possibly diverted or kept the money.”

While Educator Melton claimed that the money was mailed to various charitable institutions, the majority of the evidence refuted her claim. The evidence unequivocally showed that Educator Melton received the \$4,000 from a student. However, there was no evidence corroborating Educator Melton's claim that the money was received by Southern Arkansas Community College, Southern Arkansas University, or the Salvation Army. There was no evidence that the money was received by any other institution or individual. As such, it is more than possible that Educator Melton diverted or kept the money.

Educator Melton argues that her principal did not warn her of any unacceptable financial reporting practices she was exhibiting prior to the write-up she received on April 15, 2014. Even if that argument is true, Educator Melton received the April 15, 2014 write-up prior to receiving \$4,000 from a student in the fall of 2014. The April 15, 2014 write-up, signed by Educator Melton, clearly stated:

Any future failure to deposit or provide an accurate record of collected money from students, staff, or patrons will be just cause for termination of duties.

As such, prior to accepting the \$4,000 from a student in the fall of 2014, Educator Melton was aware or should reasonably have known that she was required to notify the administration and keep an accurate record of the collected money. Educator Melton did neither.

The State Board finds, by a preponderance of the evidence, that Educator Melton violated Standard 3 of the Code of Ethics.

B. Retroactive Application of Licensure Suspension

Educator Melton requests that the recommended one (1) year licensure suspension be retroactively applied with a start date in December of 2014. The PLSB objects. The State Board finds Educator Melton's request for a retroactive start date of the suspension period to be reasonable.

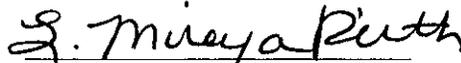
V. Conclusion and Sanctions

During the regular session, the State Board moved, seconded, and unanimously voted in favor of upholding the Ethics Subcommittee's evidentiary hearing findings and modifying the recommended sanction.

The State Board hereby orders the suspension of Educator Melton's license until the summer of 2016, assesses a one-hundred dollar (\$100.00) fine, and requires Educator Melton to complete Tier 2 financial training prior to the reinstatement of her license. Educator Melton is responsible for all costs associated with the required training.

Educator Melton's license shall be reinstated prior to the beginning of the 2016-2017 school year provided that she has paid the assessed fine and completed the Tier 2 financial training.

IT IS SO ORDERED.



Mireya Reith, Vice Chair
Arkansas State Board of Education

1/14/16
Date