

BEFORE THE KANSAS STATE BOARD OF EDUCATION

In the Matter of
the License of
Elana Fulton

PPC No. 21-PPC-15
OAH No: 22ED0003 ED

FINAL ORDER

NOW, on this 12th day of April 2022, the above-captioned matter comes for consideration by the Kansas State Board of Education (Board). Appearing for the Board are Chairman, Jim Porter and members, Betty Arnold, Jean Clifford, Michelle Dombrosky, Melanie Haas, Deena Horst, Ben Jones, Jim McNiece, Ann Mah and Janet Waugh.

WHEREUPON the Professional Practices Commission (Commission) considered the matter on January 21, 2022. Elana Fulton appeared not. The Kansas State Department of Education appeared through its attorney, General Counsel, R. Scott Gordon. After reviewing the evidence, the Commission voted **5 – 0**, to recommend the Board suspend Elana Fulton’s professional teaching license for the remainder of the contract year, 2021-2022.

WHEREUPON the Board reviewed the Commission’s Initial Order and after considering the presentation by Jennifer Holt, Commission Chair, who was available to answer the Board’s questions and being otherwise duly advised in the premises, the Board adopted the Commission’s findings of fact and conclusions of law by a vote of **10 – 0**.

All findings set forth in the Commission’s Initial Order attached hereto are incorporated by reference and made a part of this Final Order as though fully set forth at length herein.

IT IS THEREFORE CONCLUDED by the Kansas State Board of Education that Elana Fulton’s professional teaching license is suspended for the remainder of the contract year 2021-2022.

This Final Order is made and entered this 12th day of April 2022.

Kansas State Board of Education



BY: Jim Porter, Chairman
Signed April 12, 2022

NOTICE TO LICENSEE/APPLICANT

This is a Final Order and is effective upon service.

To request reconsideration of this order, you must file a Petition for Reconsideration with the Secretary to the State Board of Education, at the address below, within 15 days after service of this Final Order. The Petition must state the specific grounds upon which relief is requested.

To request a stay of effectiveness of this order, you must file a Petition for Stay with the Secretary to the State Board of Education at the address below. A petition can be filed until the time which a petition for judicial review would no longer be timely.

To seek judicial review of a Final Order, you must file a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* within 30 days following the service of the Final Order. Filing a Petition for Reconsideration is not a prerequisite for seeking judicial review. A copy of any Petition for Judicial Review must be served upon the Secretary to the State Board of Education at the address below.

Makayla Auldridge
Secretary, Kansas State Board of Education
Landon State Office Building
900 SW Jackson Ave. Suite 600N
Topeka, Kansas 66612

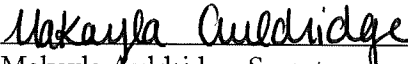
CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of April 2022, a true and correct copy of the above and foregoing was mailed by certified mail, return receipt requested, to:

Elana Fulton
2341 SE Blair Ct.
Topeka, Kansas 66605

And via interoffice mail to:

R. Scott Gordon
Kansas State Department of Education
900 SW Jackson Street, Ste. 102
Topeka, Kansas 66612



Makayla Auldridge, Secretary
Kansas State Board of Education

BEFORE THE KANSAS STATE DEPARTMENT OF EDUCATION
PROFESIONAL PRACTICES COMMISSION

In the Matter of
the Professional Licensure of

Elana Fulton

OAH Case No.: 22ED003 ED

KSDE Case No.: 21-PPC-15

INITIAL ORDER

Decision

Having heard the testimony of the witnesses, considered the evidence presented, reviewed the applicable statutes, regulations and policies, and otherwise being duly and fully informed in the premises of this matter, the Professional Practices Commission (Commission) of the Kansas State Department of Education (KSDE) on a vote of 5 to 0 recommends to the Kansas State Board of Education (State Board) that the Complaint filed by Dr. Michael Schumacher (Dr. Schumacher), Associate Superintendent of Human Resources for the Shawnee Mission Unified School District No. 512 (School District), seeking to discipline the teaching license of Elana Fulton (Fulton) due to Fulton's breach of the employment contract entered into with the School District be affirmed, and Fulton's teaching license be suspended for the remainder of the Contract year 2021-2022.

Statement of Case

This matter comes on for hearing before the Commission upon the Amended Complaint¹ filed by the School District on November 29, 2021 seeking discipline of Fulton's Kansas professional teaching license due to an alleged breach of her employment contract with the School District.

The matter was presented to the Commission on January 21, 2022 for the Commission to consider if the matter should be dismissed according to the provisions of K.A.R. 91-22-7. The Commission was also to consider whether Fulton had complied with the provisions of K.A.R. 91-22-9 requiring that an answer to the amended complaint be filed. Upon considering the pleadings submitted by the parties, the Commission concluded the matter a decision could be reached in the matter without the need for further hearing.

Appearing for the Commission were Chairperson, Jennifer Holt, and members Caroline Spaulding, Jamie Wetig, Aaron Edwards, and Charrica Osborne.

¹ The School District filed the original complaint on or about October 18, 2021. During a prehearing conference conducted on November 12, 2021 it was learned that Fulton had not been served with the original complaint due to Fulton having moved. The School District advised that an amended complaint would be filed and served to Fulton at her current address.

Fulton did not appear, although she did submit a response to the School District's briefing on the issues for the Commission to consider. Within the response Fulton stated she would "accept the [Commission]'s decision and do not wish to contest or for an evidentiary hearing to take place, as I do not feel legally prepared to argue SMSD's allegations."

The School District appeared by and through Rachel England, General Counsel.

Findings of Fact

1. Fulton is licensed to teach in the State of Kansas.
2. Fulton entered into a Professional Employee Contract (Contract) with the School District on December 8, 2020. (Complaint, Ex. A).² The term of the Contract was for the 2021-2022 school year. The Contract expressly included and incorporated the Articles of Agreement executed by the Board of Education of the School District and the National Education Association of Shawnee Mission (Agreement). (Complaint, Ex. C).
3. The Agreement contained the following late resignation provision in Article V(H)(3):

"Late Resignation. Professional Employees who desire to resign late, after the date designated in K.S.A. 77-2251, may resign under one of the following 3 options:

- a. Notice and Liquidated Damages. The Professional Employee must provide a minimum of 10 contract days' notice of resignation, counted from the first contract day after the resignation notice is tendered, and pay liquidated damages in the amount of \$2,000.00 to the District. Such Sum must be submitted by a personal check or a signed authorization for a payroll deduction on the date the resignation notice is tendered.
- b. Suitable Replacement. The Professional Employee must provide notice of resignation and allow the District 28 calendar days, counted from the day after the resignation notice is tendered, to find a suitable replacement for their position.
 - i. If the District is able to secure a suitable replacement within the 28-day time period, then the Professional Employee's last day of employment would be the last contract day before the start of their replacement.

² While the School District did file an Amended Complaint, not all of the exhibits referenced in the Amended Complaint were attached or appropriately marked. As the Amended Complaint was the same in most respects as the Complaint, the citation to exhibits refers to the exhibits attached to the original complaint.

- ii. If the District is unable to secure a suitable replacement by the expiration of the 28-day time period, then the Professional Employee's last date of work would be on the last contract day within the 28-day time period and the Professional Employee may resign and leave their position without payment of liquidated damages.
- c. Proof of Qualifying Exception. The Professional Employee must provide notice as provided below and documented proof that they meet one of the following qualifying exceptions:
 - i. Move of a spouse for employment purposes to a residence more than 75 miles from the District's central office building. The Professional Employee must provide a minimum of 10 contract days' notice of resignation, counted from the first contract day after the resignation notice is tendered.
 - ii. Job promotion to an administrative position with a pre-K-12 school or school district. The Professional Employee would only be released from their contract effective the first contract day of the Fall semester, or effective the first contract day of the Spring semester. The Professional Employee must provide a minimum of 21 calendar days' notice of resignation, counted from the first day after the resignation is tendered.
 - iii. Mutual benefit of the District and the Professional Employee. The Assistant Superintendent of Human Resources may agree in writing to release a Professional Employee from their contract."

4. On September 3 and 4, 2021 Fulton sent emails to Dr. Schumacher notifying him that she was resigning from her position as a teacher for the School District. (Complaint, Ex. B). Fulton attached a letter of resignation.

5. On September 4, 2021 Dr. Schumacher responded to Fulton's email and accompanying letter. (Complaint, Ex. B). Dr. Schumacher referenced the "Late Resignation" section of the Agreement that was incorporated into the Contract. Dr. Schumacher suggested that Fulton had two (2) options: work for ten (10) days and pay \$2,000 liquidated damages or work twenty-eight (28) days while the School District sought to find a suitable replacement.

6. On September 5, 2021 Fulton responded indicating that her last day would be September 7, 2021 and she was willing to pay the \$1,000 liquidated damages stated in the contract she had signed. (Complaint, Ex. B).

7. On September 6, Dr. Schumacher acknowledged the Contract had stated \$1,000; however, the terms of the Contract were subject to the Agreement that had been negotiated, and that pursuant to the terms of the Agreement, the liquidated damages had been increased to \$2,000, along with the ten (10) days' notice. (Complaint, Ex. B).

8. On September 6, 2021 Fulton responded to Dr. Schumacher's email. (Complaint, Ex. B). Fulton advised she was not returning to school and would not be completing the notice period. Fulton asserted the environment "had an extreme effect on [her] mental health" and came to this decision in consultation with her doctor.

9. The last day Fulton reported to work for the School District was Friday, September 1, 2021.

10. The School District's Board of Education could not accept Fulton's letter of resignation because she had not complied with the terms of her Contract, as modified by the Agreement. Because Fulton had abandoned her position with the School District and breached the Contract, the School District's Board of Education proceeded to terminate Fulton's contract of employment.

11. On September 27, 2021 the School District's Board of Education adopted a resolution of intent to terminate Fulton's contract of employment due to abandonment and failure to fulfill the terms of the Contract. (Complaint, Ex. D).

12. Notice of the School District's Board of Education resolution was provided to Fulton on September 28, 2021.

13. On October 11, 2021 the School District Board of Education adopted a resolution terminating Fulton's contract of employment due to abandonment and failure to fulfill the Contract. (Complaint, Ex. E). A copy of the resolution was provided to Fulton on October 13, 2021.

14. This matter came before the Commission due to the Complaint filed on behalf of the School District on October 18, 2021.

15. An Amended Complaint was filed on behalf of the School District on November 29, 2021.

16. Fulton did not file an answer to the Complaint within the twenty (20) days set forth in K.A.R. 91-22-9(a).

17. During a prehearing conference conducted on December 28, 2021, the parties were instructed to file briefs concerning the applicability of the provisions of K.A.R. 91-22-7 which requires a complaint be dismissed if the employment contract contains a liquidated damages clause. The parties were also instructed to brief the issue of Fulton's failure to answer the complaint as provided by K.A.R. 91-22-9(a).

18. The School District filed its brief on January 10, 2022.
19. Fulton filed a response to the School District's brief on January 19, 2022.
20. The School District filed an unsolicited reply brief on January 21, 2022.

Conclusions of Law

1. The State Board is responsible for the general supervision of education, including the certification and licensure of teachers, in Kansas.³

2. A complaint seeking discipline against Fulton's State of Kansas teaching license was filed by the District in compliance with K.A.R. 91-22-5a.

3. "Any license issued by the state board **may** be suspended or revoked, or the license holder may be publicly censured by the state board for misconduct or other just cause."⁴

4. Regulation allows for suspension or revocation of a teacher's license for "breach of an employment contract with an education agency by abandonment of the position."⁵

5. "All contracts shall be binding on both the teacher and board of education of the school district until the teacher has been legally discharged from such teacher's teaching position or until released by the board of education from such contract. Until such teacher has been discharged or released, such teacher shall not have authority to enter into a contract with the board of education of any school district for any period of time covered in the original contract. If upon written complaint, signed by $\frac{2}{3}$ of the members of the board of education of the school district, any teacher who is reported to have entered into a contract with another school or board of education without having been released from such former contract, or for other reasons fails to fulfill the provisions of such contract, such teacher, upon being found guilty of such charge at a hearing held before the state board of education, shall have such teacher's license suspended for the remainder of the term for which such contract was made."⁶

6. "(a) The commission, on its own motion, or a member of the teaching or school administration profession may initiate proceedings before the commission by filing a complaint in writing alleging that a license holder or applicant has engaged in any conduct for which a license issued by the state board may be denied, suspended, or revoked under K.A.R. 91-22-1a and amendments thereto. The complaint shall be filed with the commission's secretary."⁷

³ Kan. Const., Art. VI and K.S.A. 72-255.

⁴ K.A.R. 91-22-1a(a).

⁵ K.A.R. 91-22-1a(a)(9).

⁶ K.S.A. 72-2216.

⁷ K.A.R. 91-22-9.

7. "A complaint filed directly with the state board pursuant to K.S.A. 72-1383 or K.S.A. 72-5412, and amendments thereto, alleging that a license holder is in breach of the license holder's employment contract with a local board shall be referred to the commission for investigation, hearing, and the entry of an initial order regarding licensure. If the investigation reveals a settlement provision or liquidated damages clause in local board policy or in the contract of the employee, so that the employee could make a financial settlement to a local district governing authority or be relieved of contractual commitment by other agreed means, the case shall be dismissed by the commission."⁸

8. As has been previously identified by the State Board, there is a conflict that exists between the statute and the regulation governing these matters. The statute requires suspension of a teacher's license for failing to fulfill the terms of a legally binding contract. There is no consideration given to the existence, or not, of a liquidated damage clause within the contract. Whereas, the regulation requires dismissal of the complaint if there exists a liquidated damages clause within the contract.

9. Pursuant to the Agreement, had the Board of Education of the School District accepted Fulton's letter of resignation, Fulton would have been contractually obligated to give ten (10) days' notice and pay liquidated damages in the amount of \$2,000. Fulton elected not to provide ten (10) days' notice, having not returned to the School District after her last day of work on September 3, 2021, the same day she submitted her letter of resignation. Nor did Fulton pay the \$2,000 in liquidated damages.

10. Dr. Schumacher allowed Fulton the opportunity to indicate which of the two (2) provisions in the Agreement she was going to accept, either ten (10) days' notice with liquidated damages or twenty-eight (28) days' notice with no liquidated damages. Fulton elected neither, indicating she was not going to provide any notice. This was in direct breach of the contract. By refusing to accept either provision, Fulton did not elect to pursue the opportunity for financial settlement, but rather blatantly indicated her desire to breach the contract.

11. Based upon Fulton's abandonment of her position of employment and failure to return to work, the Board of Education of the School District exercised its discretion and rejected Fulton's resignation letter and issued a notice of intent to terminate. Having received no further information from Fulton, the Board of Education for the School District terminated Fulton for abandonment of her employment and breach of contract.

12. Fulton was warned of the potential implications of her failure to comply with the terms of the Contract. Fulton chose to abandon her teaching position with the School District, in breach of her contract.

⁸ K.A.R. 91-22-7.

13. As to the issue of Fulton's failure to answer the Amended Complaint within the required twenty (20) days, the Commission accepted Fulton's response to the School District's brief as a late answer, even though Fulton made no request that the Commission do so. In so doing, the Commission noted that Fulton acknowledged the allegations made against her and indicated she did not want to contest the Commission's decision as to any proposed suspension.

14. On a vote of five (5) in favor and zero (0) opposed, the Commission recommends to the State Board that the Complaint filed by Dr. Michael Schumacher, Associate Superintendent of Human Resources for the Shawnee Mission Unified School District No. 512, seeking to discipline the professional teaching license of Elana Fulton be affirmed, and that Elana Fulton's professional teaching license be suspended for the remainder of the Contract year, 2021-2022.

IT IS SO ORDERED.



Jennifer Holt, Chairperson
Professional Practices Commission

Notice

This Initial Order of the Professional Practices Commission is not a Final Order and is required to be reviewed by the Kansas State Board of Education in accordance with the provisions of the Kansas Administrative Procedure Act.

You may submit to the Kansas State Board of Education for its consideration as a part of its review of the Initial Order, a written brief citing legal authority as to why the above recommendation should not be accepted. You must file the brief with the State Board Secretary at the address indicated below within **ten calendar** days after service of the Initial Order for transmittal to the State Board. You must also make any request for oral argument at that time.

Marisa Seele
Secretary, Kansas State Board of Education
900 SW Jackson Street,
Topeka, Kansas 66612

Response briefs are due within **ten calendar days** after service of the legal brief upon the opposing party. Any reply brief is due **five calendar days** after service of any response brief on the opposing party. Any response or reply briefs must also be filed with the State Board Secretary at the address indicated above.

Certificate of Service

On March 8, 2022, I certify that a copy of the foregoing was placed in the United States first class mail, postage prepaid, addressed to:

Elana Fulton
2341 SE Blair Ct
Topeka, KS 66605

Dr. Michael Schumacher, Associate Superintendent of Human Resources
Shawnee Mission School District
Center for Academic Achievement
8200 W 71st Street
Shawnee Mission, KS 66204

Rachel B. England, General Counsel
Shawnee Mission School District
8200 W. 71st St.
Shawnee Mission, KS 66204

and, I further certify that I caused a copy of the foregoing to be hand-delivered to:

R. Scott Gordon, Attorney
Kansas State Department of Education
900 SW Jackson, Ste. 102
Topeka, KS 66612
Tel: (785) 296-3204



Marisa Seele, Secretary
Professional Practices Commission
Kansas State Department of Education
900 SW Jackson Street
Topeka, KS 66612-1182