

BEFORE THE KANSAS STATE BOARD OF EDUCATION

In the Matter of
The Professional License
of Cheryl McDonald

Case No. 18-PPC-05
OAH No. 18ED0018ED

FINAL ORDER

Now, on this the 11th day of September, 2018, the above-captioned matter comes on for consideration by the Kansas State Board of Education (“State Board”) upon the Complaint filed by the Kansas State Department of Education (“KSDE”) requesting revocation of Cheryl McDonald’s teaching license. Appearing for the State Board are Chairman Jim Porter and members Kathy Busch, Deena Horst, Jim McNiece, Janet Waugh, Ken Willard, Steve Roberts, Sally Cauble, and Ann Mah. KSDE appeared through General Counsel R. Scott Gordon. Cheryl McDonald did not appear.

WHEREUPON a full evidentiary hearing was held before the Professional Practices Commission (“Commission”) and such hearing was conducted on August 10, 2018. At that hearing Ms. McDonald appeared on her own behalf. KSDE appeared by and through General Counsel, R. Scott Gordon.

WHEREUPON a Notice of Review was mailed to Ms. McDonald on August 31, 2018, providing her with notice of the date, time and location of the review of the licensure matter involving Cheryl McDonald by the State Board.

WHEREUPON the State Board reviewed the recommendations of the Commission. Based upon the additional facts learned since the PPC hearing and following the issuance of the Initial Order, the State Board adopts most of the findings of fact and conclusions of law issued by the Commission but does not impose the discipline recommended by the PPC. Instead, the State Board enters the following findings of fact and conclusions to support the decision to cancel and revoke the professional teaching license of Cheryl McDonald.

FINDINGS OF FACT

1. As of the date of the Complaint filed in this matter, Ms. McDonald held a professional teaching license, which is scheduled to expire on September 21, 2021.
2. Ms. McDonald testified that she was charged with theft in Kansas City, Missouri in 2012. She completed a diversion, although she testified that she did not realize that it was a diversion. Ms. McDonald testified that she was told to complete a class related to her offense and once the class was completed the complaint was dismissed.
3. Ms. McDonald was a licensed teacher at the time of the offense.
4. On or about March 8, 2016, Ms. McDonald submitted an Application for Kansas License to be a teacher. Ms. McDonald reported on the application that she had never "entered into a diversion agreement or otherwise had a prosecution diverted after being charged with any felony or any crime involving theft, drugs, or a child."
5. Ms. McDonald's application was approved.

6. On or about November 4, 2017, Ms. McDonald was issued a citation, #E00257340, in Overland Park, Kansas, charging her with a violation of Section 11.12.120(A) of the Municipal Code of the City of Overland Park, theft, a misdemeanor, Overland Park Municipal Court Case No. CR-2017-0526718.

7. On or about January 9, 2018, Ms. McDonald entered into a diversion agreement with the City of Overland Park relating to the November 4, 2017, theft violation, Overland Park Municipal Court Case No. CR-2017-0526718. The term of the agreement was twelve (12) months.

8. Ms. McDonald represented in the diversion agreement that she had "not previously participated in a diversion of any theft, or similar offense, nor previously been convicted of or plead no contest to a violation of any such offense, nor had any such offense amended to a lesser charge."

9. On January 18, 2018, the City of Overland Park filed a motion to terminate Ms. McDonald's diversion agreement, alleging that she had violated the terms and conditions of the agreement by failing to disclose a February 8, 2012 theft in Kansas City, Missouri.

10. On February 15, 2018, Ms. McDonald was convicted of the November 4, 2017, theft violation, Overland Park Municipal Court Case No. CR-2017-0526718, and was placed on probation for a period of one year. The term of probation is set to expire February 15, 2019.

11. Ms. McDonald was licensed at the time of this offense.

12. On April 18, 2018, the KSDE filed a Complaint against Ms. McDonald seeking revocation of her teaching license based on her alleged misconduct.

13. The date of the PPC hearing occurred on August 10, 2018. The Initial Order was served upon Ms. McDonald by regular mail at her residence on August 17, 2018.

14. As noted on page 6 of the Initial Order, footnote 2 (Board Packet, page 153), Ms. McDonald was instructed to contact her Employer and was instructed to inquire with her Employer about the additional resources which might be available to her through the Employer's Employee Assistance Program (EAP).

15. On September 11, 2018, the Superintendent of Schools where Ms. McDonald is currently employed confirmed with the Office of General Counsel that Ms. McDonald had not reported the conduct or the pendency of the licensure proceedings to her supervisor(s) at the District.

16. Even if there was a misunderstanding by Ms. McDonald as to the mandatory nature of the directives by the PPC to her for reporting to her Employer at the time of the hearing (recommended versus instructed), the Initial Order was clear that Ms. McDonald was instructed to report the conduct to her Employer, she did not do so.

17. A Notice of Review was mailed to Ms. McDonald on August 31, 2018, providing her with notice of the date, time and location of the review of the licensure matter involving Cheryl McDonald by the State Board. Therefore, Ms. McDonald was aware of the issuance of the Initial Order and the fact that the licensure action was on the Agenda for consideration by the State Board on September 11, 2018.

18. The State Board considered the aggravating and mitigating factors involved, but considered the following aggravating factors to be significant in their decision to move for revocation:

- Additional significant facts developed after the PPC hearing that had a bearing on the fitness of Ms. McDonald to remain as a licensed educator in the State of Kansas;
- Ms. McDonald had been licensed for 37 years;

- Ms. McDonald was a licensed teacher at the time of the both criminal actions;
- Ms. McDonald has had multiple issues and the "repetitive nature" of the problems is a concern;
- Ms. McDonald has not followed the norms that the State Board would expect of a teacher in her position;
- The State Board is concerned with the pattern of behavior. This is an integrity issue of a licensed teacher, regardless of the amount in controversy in the theft;

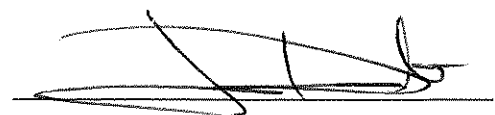
In light of these facts, the State Board reaches the following conclusions:

1. Any license issued by the State Board may be cancelled by the State Board in the manner provided by law. K.S.A. 72-2155.
2. The Commission conducted a full evidentiary hearing on the matter.
3. The Initial Order of the PPC is not a Final Order and is required to be reviewed by the Kansas State Board of Education. K.S.A. 72-2313, K.A.R. 91-22-25(b).
4. The State Board of Education is responsible for the general supervision of education, including the certification and licensure of teachers, in Kansas. K.S.A. 72-255 and Kan. Const., Art. VI.
5. The State Board is bothered by the pattern of behavior of the licensee.
6. This pattern reflects a lack of integrity.
7. An important responsibility of the State Board is to determine whether the licensee engaged in any form of misconduct as described in K.A.R. 91-22-1a. The State Board does not disagree with the Commission's recommendation, but finds that based upon the additional facts learned since the PPC Hearing, there is sufficient evidence to enhance the disciplinary action.
8. The State Board concludes that professional misconduct has occurred under K.A.R. 91-22-1a(3), 91-22-1a(11) and 91-22-1a(13).
9. The licensee has been given notice and an opportunity to be heard on the complaint and the conduct alleged.
10. The State Board does not believe the recommended discipline of censure is sufficient. The State Board finds that it has no choice but to err on the side of caution and protect Kansas Students. There is substantial competent evidence to support the conclusion that a revocation is justified in this case. This warrants more severe discipline and Ms. McDonald should be removed from the classroom.

Therefore, having regard for the nature and seriousness of Ms. McDonald's pattern of misconduct, it is ordered by the Kansas State Board of Education that Cheryl McDonald's license and any endorsements which may be attached to it are hereby revoked. The State Board voted 6-3 in favor of the motion to revoke the license of Cheryl McDonald.

This Final Order is made and entered this 12th day of September, 2018.

Kansas State Board of Education



By: Jim Porter, Chairman
Signed September 12, 2018.

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.

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

BEFORE THE KANSAS STATE DEPARTMENT OF EDUCATION
PROFESIONAL PRACTICES COMMISSION

In the Matter of
the License of
Cheryl McDonald

Case No. 18-PPC-05
OAH No. 18ED0018 ED

INITIAL ORDER

Statement of Case

This matter comes on for hearing before the Professional Practices Commission (“Commission”) of the Kansas State Department of Education (“KSDE”) upon the Complaint filed by the KSDE seeking revocation of the license of Cheryl McDonald.

The hearing was held on August 10, 2018. Appearing for the Commission were chairperson, Linda Sieck, and members, Nathan Reed, Laura Batson, William Anderson, Eric Filippi, Jennifer Holt and Aaron Edwards.

Ms. McDonald appeared *pro se* and testified on her own behalf.

The KSDE appeared by and through its attorney, General Counsel, R. Scott Gordon.

Findings of Fact

1. As of the date of the Complaint filed in this matter, Ms. McDonald held a professional teaching license, which is scheduled to expire on September 21, 2021.
2. Ms. McDonald testified that she was charged with theft in Kansas City, Missouri in 2012. She completed a diversion, although she testified that she did not realize that it was a diversion. Ms. McDonald testified that she was told to complete a class related to her offense and once the class was completed the complaint was dismissed.

3. Ms. McDonald was licensed as a teacher at the time of the offense.

4. On or about March 8, 2016, Ms. McDonald submitted an Application for Kansas License to be a teacher. Ms. McDonald reported on the application that she had never “entered into a diversion agreement or otherwise had a prosecution diverted after being charged with any felony or any crime involving theft, drugs, or a child.”

5. Ms. McDonald’s application was approved.

6. On or about November 4, 2017, Ms. McDonald was issued a citation, #E00257340, in Overland Park, Kansas, charging her with a violation of Section 11.12.120(A) of the Municipal Code of the City of Overland Park, theft, a misdemeanor, Overland Park Municipal Court Case No. CR-2017-0526718.

7. On or about January 9, 2018, Ms. McDonald entered into a diversion agreement with the City of Overland Park relating to the November 4, 2017, theft violation, Overland Park Municipal Court Case No. CR-2017-0526718. The term of the agreement was twelve (12) months. Ms. McDonald represented in the diversion agreement that she had “not previously participated in a diversion of any theft, or similar offense, nor previously been convicted of or plead no contest to a violation of any such offense, nor had any such offense amended to a lesser charge.”

8. On January 18, 2018, the City of Overland Park filed a motion to terminate Ms. McDonald’s diversion agreement, alleging that she had violated the terms and conditions of the agreement by failing to disclose a February 8, 2012 theft in Kansas City, Missouri.

9. On February 15, 2018, Ms. McDonald was convicted of the November 4, 2017, theft violation, Overland Park Municipal Court Case No. CR-2017-0526718, and was placed on probation for a period of one year. The term of probation is set to expire February 15, 2019.

10. Ms. McDonald was licensed at the time of this offense.

11. On April 18, 2018, the KSDE filed a Complaint against Ms. McDonald seeking revocation of her teaching license based on her alleged misconduct.

12. On May 21, 2018, Ms. McDonald filed a request for a hearing on the complaint filed by KSDE.

Conclusions of Law
and
Discussion

1. The Kansas State Board of Education (“State Board”) is responsible for the general supervision of education, including the certification and licensure of teachers, in Kansas. Kan. Const., Art. VI and K.S.A. 2017 Supp. 72-255.

2. K.A.R. 91-22-1a(a) provides, in pertinent part, that “[a]ny 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” including: “(3) conviction of any misdemeanor involving theft” or “(11) entry into a criminal diversion agreement after being charged with any offense or act described in this subsection.” (Emphasis added).

3. K.A.R. 91-22-1a(a)(12) also provides that a license may be suspended or revoked for “obtaining, or attempting to obtain, a license by fraudulent means or through misrepresentation of material facts.”

4. K.A.R. 91-22-1a(b) provides that a “license may be denied by the state board to any person . . . for any act for which a license may be suspended or revoked pursuant to subsection (a).”

5. Ms. McDonald acknowledged that she was charged with theft in 2012, and that what she did was wrong.

6. Ms. McDonald also took responsibility for the theft conviction in February of 2018.

7. Ms. McDonald testified that both incidents took place at times when she was broke and needed essential items. Her husband was ill, and she was the only source of income. However, she recognized that there was no excuse for her conduct. She stated that she was humiliated and embarrassed by her actions.

8. She testified that it was not clear to her after the 2012 offense that she was given a diversion agreement. She recognized that she was not prosecuted but stated that it was never identified as a diversion. According to Ms. McDonald, that is why she marked no on her 2016 teaching license application in response to entering into a diversion and why she indicated on the 2018 diversion agreement that she had not had a previous diversion.

9. Ms. McDonald testified to the changes that have taken place in her life, including the identification of community and family resources that can help her in a time of need, that will keep her from reengaging in this activity in the future.

10. K.A.R. 91-22-1a(g) sets forth what must be satisfied for a teacher that has had their license denied or revoked based on a violation of the provisions in subsection (a) of the same regulation to apply for a new license. KSDE suggested that because Ms. McDonald was convicted of the crime of theft that she was not eligible to be licensed for a period of five (5) years from the date of conviction, based on the provisions in K.A.R. 91-22-1a(g)(2).

11. The Commission disagreed with the KSDE suggestion that they were required to revoke Ms. McDonald's license on the basis that she was convicted and ineligible to have a license. Ms. McDonald's license had not been previously revoked or denied. The regulation does not mandate that a teacher convicted of the crime of theft have their license revoked, but rather states that the teacher's license may be revoked. Therefore, the Commission reasoned that until the Ms. McDonald's license is revoked or denied, subsection (g) of K.A.R. 91-22-1a was not applicable.¹

12. Although not required in this matter, the Commission felt it was appropriate to consider the factors set forth in K.A.R. 91-22-1a(g)(1) in determining if Ms. McDonald should be revoked or if there was sufficient evidence that she had been rehabilitated since her conviction. The factors are as follows:

- (A) The nature and seriousness of the conduct that resulted in the denial or revocation of a license;
- (B) the extent to which a license may offer an opportunity to engage in conduct of a similar type that resulted in the denial or revocation;

¹ It should be noted that this would not prevent the State Board from potentially denying a future Application for Kansas License submitted by Ms. McDonald for the conduct at issue, at which time K.A.R. 91-22-1a(g) would likely apply.

- (C) the present fitness of the person to be a member of the profession;
- (D) the actions of the person after the denial or revocation;
- (E) the time elapsed since the denial or revocation;
- (F) the age and maturity of the person at the time of the conduct resulting in the denial or revocation;
- (G) the number of incidents of improper conduct; and
- (H) discharge from probation, pardon, or expungement.

13. The Commission, in determining whether to recommend to the Board that an individual's application should be granted, is required to determine the extent of the applicant's efforts at rehabilitation as well as the fitness of the applicant to be a member of the teaching profession. *Wright v. State Bd. of Educ.*, 268 P.3d 1231 (Kan.App. 2012). The Commission felt that these same principles could be considered in determining if Ms. McDonald's license should be revoked.

14. In considering the factors the Commission felt that Ms. McDonald demonstrated fitness to retain her license to teach. Among other factors the Commission identified that Ms. McDonald expressed remorse and recognition of the wrongfulness of her actions and that she had taken appropriate steps to identify resources and connections within the community she would engage in the event that she was to find herself in a similar position of need in the future.² Despite the two instances of conduct at issue, the

² The Commission did instruct Ms. McDonald to report her conduct to her supervisor immediately, as there was a question as to whether her supervisor and the school district was aware of her criminal conviction. Furthermore, the Commission instructed Ms. McDonald to inquire about her district's Employee Assistance Plan (EAP) or other resources that may be available to her through the district that would help to prevent similar conduct in the future.

Commission felt that she remained suitable to be placed in a position of trust and would be a suitable role model for students. The Commission also felt that she was forthcoming and truthful in her testimony.

15. While the Commission disagreed with the KSDE recommendation that Ms. McDonald's license be revoked, the Commission did conclude that some discipline was warranted and should be imposed.

CONCLUSION

On a vote of 6-1, it is recommended by the Professional Practices Commission to the Kansas State Board of Education that Cheryl McDonald be public censured due to her criminal conduct and that such censure continue until her current license is set to expire on September 21, 2021.

NOTICE

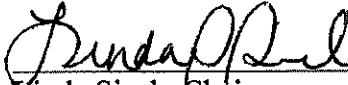
This Initial Order of the Professional Practices Commission is not a Final Order and is required to be reviewed by the Kansas State Board of Education in accordance with the provisions of the Kansas Administrative Procedure Act.

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.

Peggy Hill
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.

IT IS SO ORDERED.

 8/17/18
Linda Sieck, Chairperson
Professional Practices Commission


CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2018, a true and correct copy of the above and foregoing Initial Order was deposited in the U.S. Mail, postage paid, addressed to:

Cheryl McDonald
14196 W. 117th Street
Olathe, KS 66062

and via interoffice mail to:

R. Scott Gordon, General Counsel
Kansas State Department of Education
900 SW Jackson, Ste. 102
Topeka, KS 66612
Telephone: 785-296-3204



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

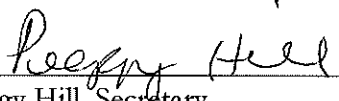
CERTIFICATE OF SERVICE

I hereby certify that on this ^{14th} ~~13th~~ day of September 2018, a true and correct copy of the above and foregoing was mailed by certified mail, return receipt requested, to:

Cheryl McDonald
14196 W. 117th Street
Olathe, KS 66062

And via interoffice mail to:

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



Peggy Hill, Secretary
Kansas State Board of Education