

**BEFORE THE PROFESSIONAL STANDARDS COMMISSION
OF THE STATE OF IDAHO**

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| In the Matter of the Certificate of: |) | Case No. 21538 |
| |) | |
| SHARON L. ACKLEY, |) | FINDINGS OF FACT, CONCLUSIONS |
| |) | OF LAW AND FINAL ORDER OF THE |
| <u>Respondent.</u> |) | HEARING PANEL |

The Chief Certification Officer Lisa Colón (CCO) filed an Administrative Complaint against Respondent Sharon L. Ackley for failure to disclose prior discipline against her certificate on her Application for Renewal of an Idaho Certificate/Credential. Ms. Ackley asked for a hearing on the Administrative Complaint. A Hearing Panel of the Professional Standards Commission was convened and held a hearing as noticed beginning at 9:00 a.m. on Tuesday, June 28, 2016, in the Barbara Morgan Room, State Department of Education, 650 West State Street, Boise, Idaho. Carolyn Rapp chaired the Hearing Panel. Holly Freed and Kristi Poole were the other members of the Hearing Panel. Michael S. Gilmore, Deputy Attorney General, advised the Hearing Panel. Brian Church, Deputy Attorney General, represented the CCO. James Piotrowski, Herzfeld & Piotrowski, Boise, Idaho, represented Ms. Ackley. This written decision of the Hearing Panel reviews the proceedings, makes Findings of Fact and Conclusions of Law, and enters a Final Order suspending Ms. Ackley’s certificate for twenty days, but allows the Mountain Home School District to permit her to speak to high school students within her district about the importance of accurately filling out applications in lieu of that suspension.

I. SUMMARY OF THE CASE

Three witnesses testified at the hearing: Chief Certification Officer Lisa Colón, Program Specialist Shannon Haas, and Respondent Sharon L. Ackley. Their testimony and the Exhibits disclosed the following:

Respondent Sharon L. Ackley held a Standard Elementary All Subjects K/8 and Standard Secondary Music K/12 Idaho Teaching Certificate/Credential effective from 9/1/2010 through 8/31/2015. Exhibit CCO-1. There are two critical, uncontested facts in this case. First, on May 30, 2006, a Hearing Panel of the Professional Standards Commission entered Amended Findings

of Fact, Conclusions of Law and Preliminary Order of the Hearing Panel imposing discipline on Ms. Ackley including a suspension of her teaching certificate. Exhibit CCO-3.¹ Second, in an Application for Renewal of an Idaho Certificate/Credential dated June 20, 2015, Ms. Ackley checked the “NO” Box for Question 1, Item 7: “Have you ever had a teacher certificate revoked, suspended, denied, ... in Idaho or any other State?” Exhibit CCO-2. Ms. Ackley also checked the “YES” boxes for the following statements on page 3 of the Renewal Application: “I attest and affirm that all statements made by me on this application are true and correct to the best of my knowledge,” and “I understand that penalties, which may include revocation, suspensions, denial, or conditions, will be imposed under Section 33-1208, Idaho Code, for making any false statements(s) on this application or required documents.” Exhibit CCO-2.

The CCO contended that the “NO” response for Item 7, Question 1, violated Idaho Code § 33-1208, subsection 1.d,² and was a willful violation of State Board of Education Rule Governing Uniformity, Rule 76 — Code of Ethics for Idaho Professional Educators (Sections 33-1208 and 33-1209, Idaho Code), Principle IV, IDAPA 08.02.02.076.05,³ in violation of Idaho Code

¹ The discipline arose of three sets of accusations against Ms. Ackley. (1) Ms. Ackley was indefinitely suspended for using standardized test materials for teaching her students. The suspension lasted until Ms. Ackley completed an ethics course or workshop, prepared a brochure on ethics, completed a course or workshop on standardized testing, and completed a course or workshop on use of copyrighted materials. (2) Ms. Ackley received a letter of reprimand for retaining school money in her classroom file cabinet and not turning it over to the school. (3) Ms. Ackley received no formal discipline for the manner in which she recommended that a first grade student be retained in first grade. In deciding the second matter involving money, the 2006 Hearing Panel found that Ms. Ackley’s explanation that she did not know there was money in a file folder given to her was not credible.

² Idaho Code § 33-1208, subsection 1.d and 1.j, provide:

§ 33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds. — 1. The state board of education may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

...

d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;

...

j. Willful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

....

³ Principle IV, IDAPA 08.02.02.077.05, provides in its entirety:

§ 33-1208, subsection 1.j. The CCO contended that Ms. Ackley's answers on the application were grounds for disciplining her under Idaho Code § 33-1208, subsections 1.d and 1.j.

The CCO and Ms. Haas acknowledged that CCO staff had not contacted Ms. Ackley to tell her that she had checked the wrong box for Item 7, Question 1, and had not given Ms. Ackley an opportunity to resubmit her application when their check of the certification files showed that Ms. Ackley had been suspended in 2006. They also acknowledged that the CCO staff had the information to determine whether Ms. Ackley had in fact been suspended in the past. They did not dispute that Ms. Ackley had contacted the CCO staff on an unrelated matter concerning her pending Renewal Application and that they had not informed her of their concerns with the mis-checked boxes in the renewal application. They agreed that Ms. Ackley had correctly checked the box for Item 7, Question 1, when she applied to renew her certificate in 2010.

In her defense, Ms. Ackley testified and her counsel argued that she had not willfully

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- 05. Principle IV — Professional Integrity.** A professional educator exemplifies honesty and integrity in the course of professional practice. Unethical conduct includes, but is not limited to: (3-20-14)
- a. Fraudulently altering or preparing materials for licensure or employment; (3-20-04)
 - b. Falsifying or deliberately misrepresenting professional qualifications, degrees, academic awards, and related employment history when applying for employment or licensure; (3-20-04)
 - c. Failure to notify the state at the time of application for licensure of past revocations or suspensions of a certificate or license from another state; (3-20-04)
 - d. Failure to notify the state at the time of application for licensure of past criminal convictions of any crime violating the statutes or rules governing teacher certification; (3-20-14)
 - e. Falsifying, deliberately misrepresenting, or deliberately omitting information regarding the evaluation of students or personnel, including improper administration of any standardized tests (changing test answers; copying or teaching identified test items; unauthorized reading of the test to students, etc.); (4-11-06)
 - f. Falsifying, deliberately misrepresenting, or deliberately omitting reasons for absences or leaves; (3-20-04)
 - g. Falsifying, deliberately misrepresenting, or deliberately omitting information submitted in the course of an official inquiry or investigation; (3-20-14)
 - h. Falsifying, deliberately misrepresenting, or deliberately omitting material information on an official evaluation of colleagues; and (3-20-14)
 - i. Failure to notify the state of any criminal conviction of a crime violating the statutes and/or rules governing teacher certification. (3-20-14)

We agree with counsel for Ms. Ackley that subsection a-i do not apply to this case.

filled out the Renewal Application incorrectly and that she had filled out the application in a hurry while there were other things going on in her personal life and had not realized her mistake at the time. She testified that she had not intended to mislead anyone, and she and her counsel emphasized that the CCO staff was not in fact misled because they had access to the file containing her original suspension. Ms. Ackley testified that because of the timing of her previous jobs that she never lost classroom teaching time as a result of the suspension in the 2006 Order.

Among other things, Ms. Ackley's counsel contended that common sense required the certification staff to call Ms. Ackley to give her an opportunity to resubmit her Renewal Application, that no one at the State Department of Education was misled by the mistake because they had access to the file showing the earlier suspension, and that checking a box incorrectly could not be considered a willful breach of the State Board Rules because at most it was accidental.

II. ANALYSIS OF THE LAW AND FACTS

We do not accept Ms. Ackley's explanation of haphazardly checking the "NO" box regarding her previous suspension. No teacher forgets a suspension from the teaching profession, even if the suspension does not lead to loss of time in the classroom. Ms. Ackley's explanation that she was in a hurry and did not devote sufficient time to her answers on the application is, like one of her explanations in her previous disciplinary hearing, simply not credible.

That brings us to our interpretation of the applicable State Board Rules and the statutes. Idaho Code § 33-1208, subsection 1.d, refers to "material statements of fact in the application" that "the applicant knows to be false." In our view, checked boxes are statements of fact no less than written answers or written attestations are statements of fact. And a checked box concerning whether a teaching certificate has ever been revoked, suspended, etc., is material because it directly bears on an applicant's fitness to be a teacher. It does not matter whether the SDE can independently verify whether the information contained in a checked box is true or false; materiality of the information does not rise or fall on whether SDE staff can learn the underlying facts.

It is the applicant's responsibility to check boxes honestly and accurately, not the SDE staff's obligation to give applicant a second chance to resubmit. We reject the notion that SDE

staff bears some responsibility for “babysitting” applicants; a renewal application comes along once every five years, and applicants have the responsibility to take the necessary time and effort to submit them honestly and accurately. That is all the more important for applicants who have had discipline in the past; they of all people should know that they must take the time to fill out an application honestly and accurately and cannot offer any excuses for their failure to do so. And, even if Ms. Ackley were so sloppy that she had not realized that she had mischecked Box 1 under Item 7 (we do not find that credible), she also attested on the following page that all of her statements on the application were true and correct to the best of her knowledge. They were not.

Ethical Principle IV begins: “A professional educator exemplifies honesty and integrity in the course of professional practice. Unethical conduct includes, but is not limited to” See footnote 3, page 2, which quotes Principle IV in full. That Ethical Principle is probably broad enough to cover the facts of this case, but there is no need for us to decide that issue. We do not need a belt and suspenders to decide this case after determining in the previous paragraph that Ms. Ackley made one or more material statements of fact in the application for her renewal certificate that she knew to be false.

That brings us to the question of what to do for discipline. Ms. Ackley’s previous suspension did not cost her any classroom time. Perhaps she would have taken her responsibilities more serious if it had. There is some sentiment on this panel for revocation or lengthy suspension of Ms. Ackley’s certificate, but in the end we decided not to go that far. But, we think that something must be done to get her attention. We therefore suspend her teaching certificate for twenty consecutive classroom days during the 2016-2017 school year. The Mountain Home School District may choose the time during which her suspension will be served. Further, if Mountain Home School District believes that Ms. Ackley’s suspension from the classroom is not in its and the students’ best interests, we give it the following the alternative.

On or before September 1, 2016, the Mountain Home School District may notify the Chief Certification Officer in writing that it wishes to retain Ms. Ackley as a teacher without suspension during the 2016-2017 school year. If it so decides, the school district must arrange for

Ms. Ackley to address high school students on the importance of filling out job application and college admission forms honestly and accurately. She must do this on at least three different occasions. To exercise this option the Mountain Home School District must provide the CCO a written proposal for Ms. Ackley to make these presentations and describe the events or classes at which she will do so. The schedule and the events and the contents of Ms. Ackley's presentation are subject to the CCO's approval. Otherwise, the Mountain Home School District must notify the CCO on or before September 1, 2016, what twenty consecutive school days it wishes to schedule Ms. Ackley's suspension. If the Mountain Home School District has not notified the CCO on or before September 1, 2016, of its choice of the suspension period, then within the following fourteen days the CCO shall notify Ms. Ackley what twenty consecutive school days her suspension will run.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Respondent Sharon L. Ackley holds an Idaho teaching certificate. Ex. CCO-1.
2. On May 30, 2006, a Hearing Panel of the Professional Standards Commission issued Findings of Fact, Conclusions of Law, and a Preliminary Order that imposed discipline on Ms. Ackley, including an indefinite suspension of her teaching certificate. Ex. CCO-3.
3. In an Application for Renewal of an Idaho Certificate/Credential dated 6/20/15, Ms. Ackley checked the "NO" box for Question 1, Item 7, which asked: "Have you ever had a teacher certificate revoked, suspended, denied," She also checked "YES" boxes for statements that said, "I attest and affirm that all statements made by me on this application are true and correct to the best of my knowledge," and "I understand that penalties, which may include revocation, suspensions, denial, or conditions, will be imposed under Section 33-1208, Idaho Code for making any false statement(s) on this application or required documents." Ex. CCO-2.
4. Ms. Ackley knew the statements represented by the checked boxes were false.

B. Conclusions of Law

1. This Hearing Panel has authority under Idaho Code § 33-1208 and § 33-1209 to

hear this contested case initiated by the Chief Certification Officer's Administrative Complaint against Ms. Ackley.

2. This Hearing Panel has authority under Idaho Code § 33-1208 and § 33-1209 to revoke, suspend, or place reasonable conditions upon Ms. Ackley's teaching certificate.

3. The facts described in Finding of Fact 3 are material misstatements of fact in an application for renewal of a teaching certificate that Ms. Ackley knew to be false.

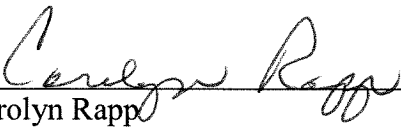
4. Suspending Ms. Ackley's teaching certificate for twenty consecutive school days is within our authority under Idaho Code § 33-1208 and § 33-1209. Providing the Mountain Home School District with the option to require Ms. Ackley to speak to high school students about the importance of honestly and accurately filling out job application and college admission forms is a reasonable condition to place upon her certificate in lieu of suspension.

FINAL ORDER

IT IS THE FINAL ORDER of this Hearing Panel that the Idaho teaching certificate/credential of Sharon L. Ackley shall be suspended for twenty consecutive school days during the 2016-2017 school year.

IT IS THE FURTHER ORDER of this Hearing Panel that in lieu of the suspension set out in the previous sentence, the Mountain Home School District may elect to require Ms. Ackley to speak to high school students as required by the text of this Order. The Chief Certification Officer must approve the schedule and the events and the contents of Ms. Ackley's presentation if her teaching certificate/credential is not suspended under the previous paragraph.

Dated this 11 of July, 2016.



Carolyn Rapp
Hearing Panel Chair

Review of Final Order

THIS IS A FINAL ORDER OF THE HEARING PANEL. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of its service date. The Hearing Panel is required by law to dispose of a Petition for Reconsideration within twenty-one (21) days of its filing or the Petition for Reconsideration will be considered to be denied by operation of law. See Idaho Code § 67-5243(3).

Petitions for Reconsideration of this Final Order may be filed by mail addressed to the Professional Standards Commission, Department of Education, Statehouse, Boise, ID 83720-0027, or may be delivered to the Department of Education, Len B. Jordan Building, Room 200, 650 West State Street, Boise, Idaho, and must be received within fourteen (14) days of the service date of this Final Order.

Judicial Review

Pursuant to Idaho Code §§ 33-1209(8), 67-5270, and 67-5272, any party aggrieved by this Final Order or by another Order previously entered in this Contested Case may obtain Judicial Review of this Final Order and of all previously issued Orders in this Contested Case by filing a Petition for Judicial Review in the District Court as provided by those sections.

A Petition for Judicial Review must be filed within twenty-eight (28) days of the service date of this Final Order, or, if a Petition for Reconsideration is timely filed, within twenty-eight (28) days of the service date of a decision on the Petition for Reconsideration or denial of the Petition for Reconsideration by operation of law. See Idaho Code §§ 67-5246 and 67-5283.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 2016, I caused to be served a true and correct copy of the preceding FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER OF HEARING PANEL by the method(s) indicated below and addressed to the following:

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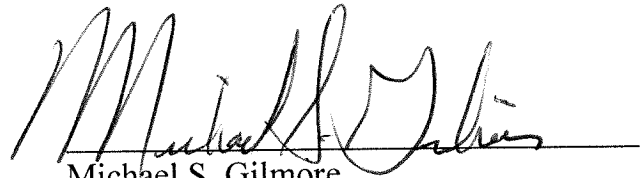
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