

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

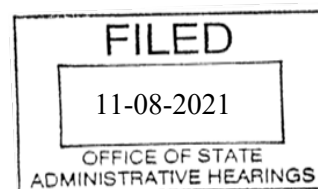
**JANNA NICHOLSON-TEEMS,
Petitioner,**

v.

**PROFESSIONAL STANDARDS
COMMISSION,
Respondent.**

**Docket No.: 2205429
2205429-OSAH-PSC-SAN-67-Teate**

Agency Reference No.: 21-2-706



FINAL DECISION

I. INTRODUCTION

Petitioner Janna Nicholson-Teems appealed the decision by the Professional Standards Commission (“Respondent” or “Commission”) finding probable cause to suspend her certificate for 20 contract days. On October 8, 2021, Petitioner filed a Motion for Summary Determination. On October 28, 2021, the Commission filed a response. After consideration of the pleadings and the parties’ legal arguments and having reviewed certain documents *in camera* at Petitioner’s request,¹ the Petitioner’s Motion is **GRANTED**, and the Commission’s decision is **REVERSED**.

II. FINDINGS OF FACT

1. Petitioner has held an educator’s certificate since July 28, 2016. On her July 26, 2016, application to the Commission, she answered “no” to the following question: “Have you been convicted of a drug offense (felony or misdemeanor)?” (Exhibit A attached to Petitioner’s Motion for Summary Determination [hereinafter “Ex. P-1”]; Exhibit 2 attached to Respondent’s Response

¹ See Petitioner’s Motion for In-Camera Inspection, filed October 8, 2021, and this Court’s Order granting the same, dated October 21, 2021.

in Opposition to Petitioner’s Motion for Summary Determination [hereinafter “Ex. R-2”].²

2. On October 13, 2007, when Petitioner was 21 years old, she was charged by citation for the offense of “Driving Under Influence Drugs/Alcohol.” The citation was resolved by a guilty plea on April 9, 2008. Petitioner was arrested for and pled guilty to driving under the influence of alcohol, and there was no arrest or guilty plea for any drug-related offense. (Ex. P-1; Exhibit 1 attached to Respondent’s Response in Opposition to Petitioner’s Motion for Summary Determination [hereinafter “Ex. R-1”]; Ex. R-3, filed under seal.)

3. In addition to the question regarding conviction for a drug offense, the application form includes a question regarding whether the applicant has ever pled guilty to a crime involving moral turpitude. The form includes an explanation that “Crimes NOT involving moral turpitude” include “Driving under the influence.” (Ex. P-1; Ex. R-2.)

4. The Commission found probable cause that Petitioner violated rules related to honesty, required reports, and professional conduct. Specifically, it cites Commission Rules 505-6-.01(3)(a) (Legal Compliance [2021]), 505-6-.01(3)(d) (Honesty [2015, 2019]), 505-6-.01(3)(i) (Required Reports [2015]) and (3)(h) (Required Reports [2019]), and 505-6-.01(3)(i) (Professional Conduct [2019]). It further found probable cause for a 20-day contract suspension of Petitioner’s certificate. (OSAH Form 1, Statement of Matters Asserted.)

III. CONCLUSIONS OF LAW

1. Summary determination in this proceeding is governed by Office of State Administrative Hearings (“OSAH”) Rule 15, which provides in relevant part:

A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated, on the basis that there is no genuine issue of material fact for determination. . . .

² She answered the same question in the same manner on subsequent applications submitted on September 25, 2020, and December 9, 2020. (See Exhibit R-2.)

Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party “is entitled to a judgment as a matter of law on the facts established.” Pirkle v. Env'tl. Prot. Div. Dep't of Natural Res., No. OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (Oct. 21, 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); see also Piedmont Healthcare. Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-305 (2006) (noting that a summary determination is “similar to a summary judgment” and elaborating that an administrative law judge “is not required to hold a hearing” on issues properly resolved by summary determination). The party opposing the motion for summary determination “may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence [. . .] that there is a genuine issue of material fact for determination.” Ga. Comp. R. & Regs. 616-1-2-.15(2)(c).

2. Commission Rule 505-6-.01(1) establishes a Code of Ethics for Educators:

The Code of Ethics defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct. The Georgia Professional Standards Commission has adopted standards that represent the conduct generally accepted by the education profession. The code defines unethical conduct justifying disciplinary sanction and provides guidance for protecting the health, safety and general welfare of students and educators, and assuring the citizens of Georgia a degree of accountability within the education profession.

If an educator violates the Code of Ethics, disciplinary sanctions may include suspension of a certificate. GA. COMP. R. & REGS. 505-6-.01; O.C.G.A. § 20-2-984.5.

3. Based on the documents before the Court, and upon careful review of the parties' arguments, the undersigned concludes that summary determination of this matter in Petitioner's favor is appropriate. Specifically, the Court agrees with Petitioner that she did not violate the rules

cited by the Commission. Petitioner was not required to report the 2008 conviction for driving under the influence, which was neither a crime of moral turpitude nor a drug offense.


4. Although the Commission indicates in its response that it agrees the offense at issue is not a crime of moral turpitude, it argues that the conviction nonetheless should be considered a “drug offense,” within the meaning of O.C.G.A. § 20-2-984.3(a)(5), which, in relevant part, authorizes it to investigate “[c]omplaints alleging that an educator has been convicted of any felony, of any crime involving moral turpitude, of any other criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana as provided for in Chapter 13 of Title 16. . . .” There is no evidence, however, that the offense here involved manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana. Similarly, the Commission points to O.C.G.A. § 20-2-984.2(a)(4), which requires school superintendents to make an immediate report to a local school board if an educator has committed “any offense involving marijuana or a controlled substance.” The Commission thus urges this Court first to presume that the Petitioner’s 2008 conviction for driving under the influence involved the use of drugs, and then to accept that the cited obligation for reporting by superintendents translates to an authorization of the Commission’s suspension of Petitioner’s certificate. Although the Court understands the necessity for holding educators accountable for offenses related to controlled substances, the undisputed facts regarding the Petitioner’s responses on her application for certification do not support a finding that she violated the Code of Ethics.

IV. DECISION

Accordingly, the Petitioner’s Motion for Summary Determination is **GRANTED**, and the Commission’s decision regarding the proposed sanction is hereby **REVERSED**. Accordingly, although an in-camera review was conducted, the undersigned judge’s determination of

exculpatory materials, if any, that should be made available to Petitioner is moot in light of this ruling. The evidentiary hearing scheduled on November 10, 2021, is canceled.

SO ORDERED, this 8th day of November 2021.



Steven W. Teate
Administrative Law Judge

