

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

CHARITY LYNN BUSSEY,
Petitioner,

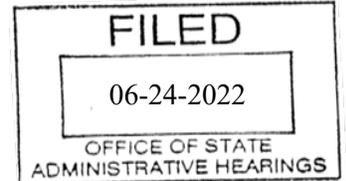
v.

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

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Docket No. 2211939
2211939-OSAH-PSC-SAN-54-Kennedy

Agency Reference No. 18-6-1663



FINAL DECISION

I. Summary of Proceedings

Petitioner requested a fair hearing to dispute Respondent’s finding of probable cause that she had violated the Code of Ethics for Educators and its proposed sanction of a one-year suspension of Petitioner’s teaching certificate. The hearing in this matter was held on May 24, 2022, pursuant to O.C.G.A. §§ 20-2-984.5(d), 50-13-13, and 50-13-41, before the undersigned administrative law judge of the Office of State Administrative Hearings. John Long, Esq. represented Petitioner. Wylencia Hood Monroe, Esq., Senior Assistant Attorney General, represented Respondent. After careful consideration of the evidence and arguments of the parties, and for the reasons stated below, the Court **AFFIRMS** the decision to sanction Petitioner’s teaching certificate, but hereby **MODIFIES** the sanction to a 10-contract day suspension.

II. Findings of Fact

1.

Petitioner holds a certificate to teach in the state of Georgia and held such teaching certificate at all times relevant to these proceedings. (Statement of Matters Asserted ¶ 1; Educator’s Response to Statement of Matters Asserted ¶ 1).

2.

Respondent initially issued Petitioner a teaching certificate on November 8, 2002. (Statement of Matters Asserted ¶ 2; Educator’s Response to Statement of Matters Asserted ¶ 2).

3.

On April 19, 2018, Petitioner entered a guilty plea, under *Alford*,¹ to misdemeanor theft by shoplifting under O.C.G.A. § 16-8-14 (theft by shoplifting involving property valued at \$500 or less). Petitioner was accused of concealing and taking possession of various merchandise items from Marshall’s, a retail establishment, on December 7, 2017. She received a sentence of 12 months’ probation and a fine of \$200 pursuant to O.C.G.A. § 42-8-60, the First Offenders Act (also “First Offender sentence”). (Statement of Matters Asserted ¶ 3; Respondent’s Exhibit 1, *State v Bussey*, No. 2018CR0054).

4.

Petitioner successfully completed the terms and conditions of her First Offender sentence, and the Superior Court of Columbia County signed an Order of Discharge on April 26, 2019.² . Per the terms of the Order of Discharge, Petitioner was discharged without court adjudication of guilt, was completely exonerated of any criminal purpose, and is not considered to have a criminal conviction. (Respondent’s Exhibit 1, *State v Bussey*, No. 2018CR0054).

5.

Upon learning of Petitioner’s case before the Superior Court of Columbia County regarding an allegation of Theft by Shoplifting, Respondent conducted an investigation. After completing its

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970) *Alford* permits a criminal defendant to plead guilty while claiming to be innocent, but the plea is one of guilt and may be accepted only if the court determines there is a factual basis for a determination of guilt. See *Argot v State*, 261 Ga. App. 569 (2003). See also *United States v. Dempsey*, 479 Fed. Appx. 935 (11th Cir. 2012) and *Morrell v. State*, 297 Ga. App. 592 at footnote 3 (2009) (an *Alford* plea is “a guilty plea and places the defendant in the same position as if there had been a trial and conviction by a jury).

² The Order of Discharge was filed with the Clerk of Court on May 3, 2019. (Respondent’s Exhibit 1, *State v Bussey*, No. 2018CR0054; Petitioner’s Petition for Declaratory Judgment Challenging Validity of the Professional Standards Commission Code of Ethics filed in the Superior Court of Columbia County 2022ECV0004 ¶ 6).

investigation,³ but prior to Petitioner’s discharge under the First Offender’s Act, Respondent found probable cause for a one-year suspension of Petitioner’s teaching certificate based on a determination that her *Alford* plea and First Offender sentence constituted a violation of the Code of Ethics for Educators. Specifically, Respondent determined Petitioner’s actions violated Standard 1 (Legal Compliance)⁴ and Standard 9 (Professional Conduct).⁵ On September 20, 2018, the Commission notified the Petitioner of the proposed one-year suspension, citing as the basis for the proposed disciplinary sanction “criminal acts committed while holding certification.” (Statement of Matters Asserted ¶¶ 4, 5; Respondent’s Exhibit 2).

6.

On October 4, 2018, Petitioner submitted a written request for a hearing to Respondent to dispute the allegation that she had violated the Code of Ethics for Educators⁶ and to dispute the proposed sanction. (Petitioner’s Appeal Letter; Educator’s Response to Statement of Matters Asserted ¶¶ 4, 5)

7.

Over three years after her request, on November 10, 2021, Respondent referred Petitioner’s appeal to the Office of State Administrative Hearings. In the Statement of Matters Asserted that accompanied the referral, Respondent alleged that, on April 19, 2018, Petitioner entered a guilty plea, under *Alford*, to misdemeanor theft by shoplifting and received a sentence of 12 months’

³ Petitioner asserts that the investigator’s failure to interview Petitioner during the investigation into this matter is a denial of due process. (Petitioner’s Appeal Letter ¶ 2; Educator’s Response to Statement of Matters Asserted ¶ 7). Although it would be preferable to speak to the accused during an investigation to have a complete record upon which to make a determination, the Court is not persuaded that the failure to do so rises to the level of a violation of Petitioner’s Due Process rights.

⁴ Ga. Comp. R. & Regs. 505-6-.01(3)(a) (2018).

⁵ Ga. Comp. R. & Regs. 505-6-.01(3)(i) (2018).

⁶ Petitioner also has filed an action in Superior Court challenging, in part, the validity and constitutionality of “any Standard of the PSC’s Code of Ethics for Educators [that] seeks to penalize an educator for an arrest disposed of pursuant to O.C.G.A. 42-8-63.1,” known as the First Offender Statute. (Petitioner’s Appeal Letter ¶ 3; Petitioner’s Motion for Ex Parte Temporary Restraining Order filed in the Superior Court of Columbia County 2022ECV0004 ¶ 6; Petitioner’s Petition for Declaratory Judgment Challenging Validity of the Professional Standards Commission Code of Ethics filed in the Superior Court of Columbia County 2022ECV0004).

first offender probation and a fine of \$200, and that, based on this, Respondent found probable cause that Petitioner had violated Rule 505-6-.01(3)(a) [Legal Compliance] and Rule 505-6-.01(3)(i) [Professional Conduct] to warrant a one-year suspension of her teaching certificate.

III. Conclusions of Law

1.

Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

In this matter, Respondent must prove that Petitioner violated Standards 1 and 9 of the Code of Ethics for Educators, and that such violation warrants a one-year suspension of Petitioner's teaching certificate.

Standard 1

3.

Standard 1 of the Code of Ethics for Educators, titled "Legal Compliance," provides, in relevant part:

An educator shall abide by federal, state and local laws and statutes. Unethical conduct includes but is not limited to the commission or conviction of a felony or of any crime involving moral turpitude; . . . or any other laws applicable to the profession. As used herein, conviction includes a finding or verdict of guilty, or a plea of *nolo contendere*, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

Ga. Comp. R. & Regs. 505-6-.01(3)(a) (2018).

4.

Petitioner argues that Respondent can *only* meet its burden to prove Petitioner violated Standard 1 of the Code of Ethics for Educators if Respondent proves one of three options: (1) that the Educator entered a guilty plea, (2) that the Educator made an admission of guilt, or (3) that the Educator committed the criminal act.⁷ Petitioner further argues that since Petitioner entered an *Alford* plea, thereby entering a guilty plea but maintaining her innocence, and since she received a discharge under the First Offenders Act, thereby receiving no adjudication of guilt and being exonerated of any criminal purpose, and since Respondent did not present any witnesses of the alleged shoplifting to prove that Petitioner, in fact, committed a criminal act, Respondent cannot prove Petitioner violated Standard 1 because there is no evidence that she “committed,” or was “convicted of”, a crime of moral turpitude.⁸

5.

Respondent, who is charged with overseeing the certification of educators in the State of Georgia, is authorized to investigate complaints alleging that an educator has been convicted of a crime involving moral turpitude. O.C.G.A. § 20-2-984.3(a)(5). Georgia law provides that the term “convicted” as it relates to investigations by Respondent regarding an educator includes a finding or verdict of guilty or a plea of *nolo contendere*, regardless of whether an appeal of the conviction has been sought; *a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted*; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction. O.C.G.A. § 20-2-984.3(a)(5) (emphasis

⁷ (Audio Recording at 47:27 to 47:38).

⁸ Petitioner also argued that having this open investigative case with the PSC and a pending proposed sanction has denied Petitioner her ability to work and rightfully use her teaching certificate. However, no evidence was presented to support this argument. There is no evidence in the record that Petitioner was denied employment because of this pending matter, or that she has been unable to use her teaching certificate as a result of this pending matter.

added). Shoplifting is deemed to be a crime of moral turpitude. See Tilley v. Page, 181 Ga. App. 98, 99-100 (4) (1986) (overruled on other grounds pertaining to whether a person may impeach a witness based on a plea of nolo contendere). Thus, based on the statutory definition of conviction applicable to Educators, Petitioner's *Alford* plea and sentence under the First Offender's Act for Theft by Shoplifting establishes that Petitioner violated Standard 1 because she has been convicted of a crime of moral turpitude.

6.

Petitioner argues that the statutory definition of conviction found in Georgia Code Section 20-2-984.3(a)(5) directly contradicts the purpose and application of the First Offenders Act, O.C.G.A. § 42-8-60, et seq., and thus cannot be used to conclude that Petitioner has violated Standard 1.

7.

The First Offenders Act provides that individuals sentenced under the Act shall be exonerated of guilt and shall stand discharged as a matter of law as soon as the individual completes the terms of his/her probation. O.C.G.A. § 42-8-60(e)(1). In this matter, the Superior Court of Columbia County entered an Order of Discharge on May 3, 2019, exonerating Petitioner of guilt upon Petitioner having successfully completed the terms and conditions of her sentence under the Act.

8.

A discharge under First Offenders (O.C.G.A. §§ 42-8-60 – 42-8-66) is not a conviction of a crime under the laws of Georgia and, except as provided in Code Section 42-8-63.1, shall not be used to disqualify an individual in any application for employment or appointment to office in either the public or private sector. See O.C.G.A. § 42-8-63. However, under Code Section 42-8-63.1, a discharge of a criminal case under Georgia Code Section 42-8-63.1 may be used to disqualify an individual for employment if the individual was discharged under the

aforementioned statute on or after July 1, 2016 and the employment is with a public school and the individual was prosecuted for a violation of Title 16 in Article 5 of Chapter 5, 6, or Part 2 or 3 of Article 3 of Chapter 12. None of the listed exceptions are applicable to this matter. See O.C.G.A. § 42-8-63.1(b)(1).

9.

Petitioner seeks a declaration that Georgia Code Section 20-2-984.3(a)(5), to the extent that it defines “conviction” to include a discharge under First Offenders Act, to be unconstitutional. As an Administrative Law Judge, this Court cannot declare a statute unconstitutional. Ga. Comp. R. & Regs. 616-1-2-.22. Moreover, other State agencies have similar language for defining “conviction” as it applies to licensing in the State of Georgia. *See* O.C.G.A. § 43-40-15(b)(1)(A), Georgia Real Estate Commission and O.C.G.A. § 33-23-21(16), Department of Insurance. As it relates to the matter before this Court, Georgia law specifically provides that a discharge under the First Offender Act constitutes a “conviction” for purposes of investigating and disciplining individuals who hold a teaching certificate in the State of Georgia. Thus, although Petitioner maintained her innocence by entering a guilty plea under *Alford*, received a discharge under the First Offenders Act exonerating her of guilt, and Respondent presented no witnesses to establish that Petitioner shoplifted, Respondent has still met its burden to prove Petitioner violated Standard 1, Legal Compliance, because Georgia Code Section 20-2-984.3 and Ga. Comp. R. & Regs. 505-6-.01(3)(a) (2018) specifically provide that an educator is “convicted of” a crime where first offender treatment without adjudication of guilt pursuant to the charge is granted and Theft by Shoplifting is a crime of moral turpitude.

Standard 9

10.

Standard 9 of the Code of Ethics for Educators, titled “Professional Conduct,” provides as follows:

An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the education profession. Unethical conduct includes but is not limited to a resignation that would equate to a breach of contract; any conduct that impairs and/or diminishes the certificate holder’s ability to function professionally in his or her employment position; or behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.

Ga. Comp. R. & Regs. 505-6-.01(3)(i) (2018).

11.

Based on the record before this court, the Commission has not proved by a preponderance of the evidence that Petitioner violated Standard 9 of the Code of Ethics for Educators. Ga. Comp. R. & Regs. 505-6-.01(3)(i) (2018). Petitioner’s *Alford* plea, in and of itself, does not establish that Petitioner has failed to demonstrate conduct that follows generally recognized professional standards at her workplace, or is conduct that fails to preserve the dignity and integrity of the education profession. Additionally, there is no evidence that Petitioner’s *Alford* plea impaired or diminished her ability to function professionally in her employment position. Finally, there is insufficient evidence in the record that Petitioner’s *Alford* plea is detrimental to the health, welfare, discipline, or morals of students.

Petitioner’s Due Process Argument

12.

Petitioner argued the PSC denied her due process by delaying the referral of her October 4, 2018, hearing request given that it was not referred to OSAH until November 2021. Georgia law

requires State agencies to forward requests for hearing to OSAH within 30 days from receipt of a hearing request. O.C.G.A. § 50-13-41(a)(1). Respondent violated this statutory provision by not referring Petitioner's appeal to OSAH until 3 years after it was received. However, as of July 1, 2018, Georgia law has provided that if a state agency fails to timely refer a request for hearing to OSAH, the party requesting the hearing may petition OSAH for an order permitting such party to file a request for hearing directly with OSAH. Id. In this matter, Petitioner did not petition OSAH for an order allowing her to file her request for hearing directly with OSAH. Moreover, no evidence was presented to show that the delay prevented Petitioner from presenting her appeal or that she suffered harm pending the referral and completion of her appeal. Carter v. State, 265 Ga. App. 44, 52 (2004) (quoting Spradlin v. State, 262 Ga. App. 897, 901 (2003) (although mere passage of time is not enough to constitute a denial of due process, a delay in conducting a hearing may rise to the level of a due process violation where it occasions prejudice to the appealing party). See also Wilbourne v. Forsyth Cty. Sch. Dist., Civil Action File No. 2:06-CV-70-WCO (U.S. Dist. Ct. N.D. of Georgia) (PSC's three-year delay referring teacher's request to OSAH did not violate the Due Process Clause but was curious).

13.

Petitioner argues that the PSC denied her due process by failing to provide her a witness list and a copy of the investigative file as requested in her October 4, 2018, hearing request. Petitioner has not cited to any rule, regulation or law that requires such disclosure in an administrative hearing. Moreover, Petitioner has presented no evidence showing that she was harmed by Respondent's failure to comply with Petitioner's request. *See generally* Quigg v. Ga. Prof'l Stds. Comm'n, 344 Ga. App. 142 (2017) (Quigg failed to show that she suffered any prejudice resulting from the way the investigation had been conducted).

Sanction

14.

The Commission is authorized to sanction an educator who is found to have violated the adopted standards of performance contained in the Code of Ethics for Educators. O.C.G.A. §§ 20-2-984.1 and 984.5; see Ga. Comp. R. & Regs. 505-6-.01.

15.

Pursuant to O.C.G.A § 20-2-984.5(c):

If the commission finds that there is probable cause for imposing a sanction against the educator, it may recommend any combination of the following:

- (1) That the educator be warned, reprimanded, monitored, or any combination thereof; or
- (2) That the certificate of the educator be suspended, revoked, or denied.

See also Ga. Comp. R. & Regs. 505-6-.01(5)(a).

16.

The Court concludes that Respondent reasonably found probable cause for imposing a sanction against Petitioner's teaching certificate. However, the Court further concludes that given her successful completion of the terms of her probation, a 10-contract-day suspension is appropriate for Petitioner's violation of Standard 1 under the specific circumstances in this case.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the court **AFFIRMS** the Commission's decision to sanction the Petitioner's certificate to teach in the state of Georgia but **MODIFIES** the sanction to a 10-contract-day suspension.

SO ORDERED, this 24th day of June, 2022.

Ana Kennedy

Ana Kennedy
Administrative Law Judge

