

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

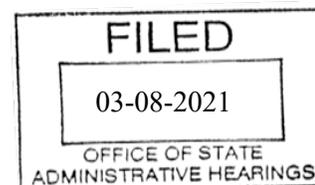
**VICTOR BUSH,**  
Petitioner,

v.

**PROFESSIONAL STANDARDS  
COMMISSION,**  
Respondent.

**Docket No.: 2109032  
2109032-OSAH-PSC-APP-14-Teate**

**Agency Reference No.: 20-6-1723**



**FINAL DECISION**

**I. Introduction**

In response to Respondent Professional Standards Commission's ("PSC") proposed sanction denying Petitioner/Applicant Victor Bush's application for an initial certificate and pre-service certificate, Mr. Bush requested a hearing. The hearing took place on February 16, 2021. Elizabeth Danforth, Esq., represented Mr. Bush, and Wylencia Moore, Esq., represented the PSC.

For reasons indicated, Respondent's denial of Petitioner's application for a teaching certificate is **REVERSED with two ethical violations of Standard 1 noted below that will become part of his permanent record subject to disclosure to any future employer and which may be considered for future sanctions by the PSC.**

**II. Findings of Fact**

1. On January 14, 2018, Mr. Bush was cited with possession of marijuana less than one ounce. That charge was dismissed without any alternate disposition on June 23, 2020, upon payment of an \$800.00 fine consisting of an administrative fee of \$750.00 and an inmate housing fee of \$50.00. (Testimony of Paul Phillips III, Investigator; Respondent Exhibits 3, 4, and 5).
2. In another jurisdiction on March 17, 2019, Mr. Bush received a second citation. He was again cited with possession of marijuana less than an ounce (O.G.G.A. § 16-13-30). On July 3, 2019, the March 17, 2019 citation was amended to a failure to exercise due care to which Mr. Bush pled guilty and paid a fine of \$546.00. The disposition sheet states that Mr. Bush was given 12 months of probation "TOC" and required to complete "Special Drug and Alcohol Conditions."<sup>1</sup>

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<sup>1</sup> There is a handwritten notation on the citation that "driver ran into a ditch." It is unclear whether the notation was

Petitioner's contention that he was never put on probation and did not have to complete any drug or alcohol treatment is inconsistent with the order signed by the Judge. Further, the certificate of service was signed by a probation officer and indicates that Mr. Bush was "instructed regarding the conditions as set forth above," which would include the 12 months' probation TOC and Special Drug and Alcohol Conditions. In all likelihood, Petitioner's probation was non-reporting for one year following the sentence (12 mos. TOC). Assuming that Mr. Bush's sentence expired upon the completion of the 12 months TOC as provided in the disposition sheet, his one-year probation would have ended on July 3, 2020. (PSC Matters Asserted ¶1; Testimony of Paul Phillips III, Investigator; Respondent Exhibits 1, 2, and 3).

3. Petitioner applied for a pre-service certificate on January 7, 2019, and an initial certificate on June 24, 2020. In both applications, Mr. Bush answered "no" to the following question: "Have you ever been convicted of a drug offense (felony or misdemeanor)?" (PSC Matters Asserted ¶¶ 1, 3, and 4; Testimony of Paul Phillips III, Investigator; Respondent Exhibits 1 and 2).

4. When Mr. Bush applied on January 7, 2019, his January 14, 2018 possession of marijuana less than one ounce charge was still pending, and he had not yet been charged with his March 17, 2019 possession of marijuana charge. (PSC Matters Asserted ¶¶ 1, 3, and 4; Testimony of Paul Phillips III, Investigator; Respondent Exhibits 1 and 2).

5. When Mr. Bush applied for an initial certificate on June 24, 2020, his January 14, 2018 charge for possession of marijuana appears to have been dismissed just one day prior to the second application. His March 17, 2019 citation had been amended on or about July 3, 2020, from a possession of marijuana charge to a conviction for the failure to exercise due care with a 12-month probation that ended on July 3, 2020, nine days following the June 24, 2020 application. (PSC Matters Asserted ¶¶ 1, 3, and 4; Testimony of Paul Phillips III, Investigator; Respondent Exhibits 1 and 2).

6. Mr. Bush did not notify the PSC of either citation pursuant to his January 7, 2019 application. Mr. Bush's initial pre-service application lapsed after failing to provide information requested within 60 days of filing the application. Mr. Bush testified that he called Investigator Phillips who advised him to allow the initial pre-service application to lapse and start a new

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written at the time of the citation or at the time that the Judge amended the charge to failure to exercise due care. (Respondent Exhibits 4 and 5). As concluded by the PSC, the term "TOC" is unclear, but it appears to mean "terminated on completion" inasmuch as there are no terms of probation noted other than "Special Drug and Alcohol Conditions." (PSC Matters Asserted ¶ 5; Respondent Exhibit 4).

application. Investigator Phillips has no recollection of this alleged conversation and opined that Mr. Bush was under an ongoing duty to report any changes to his application while it was still pending. (Testimony of Paul Phillips III, Investigator; Respondent Exhibits 3, 4, and 5).

7. Similarly, Mr. Bush did not notify the PSC of the status of either charge pursuant to his June 24, 2020 application. At the time of his June 24, 2020 application, the first citation was dismissed one day prior and his 12-month probation on the second charge for failure to exercise due care was still approximately nine days short of completion. (Testimony of Paul Phillips III, Investigator; Respondent Exhibits 3, 4, and 5).

8. Based upon the above facts and circumstances set forth above, the Georgia PSC found probable cause to deny Mr. Bush's application for certification. In particular, the PSC determined that Mr. Bush's conduct violates Rule 505-6-.01(3)(a)[Legal Compliance] (2019, 2020); Rule 505-6-.01(3)(d) [Honesty] (2019, 2020), and Rule 505-6-.01(5)(a)(7) [Unfit] (2019, 2020) of the Rules of the Professional Standards Commission in place at the time of the alleged conduct. (PSC Matters Asserted ¶ 6; Testimony of Paul Phillips III, Investigator).

9. Mr. Bush confirmed at the hearing that he answered "no" to the following question on his 2019 and 2020 applications: "Have you ever been convicted of a drug offense (felony or misdemeanor)?" Mr. Bush explained that there was no conviction for the 2018 marijuana drug offense when he originally applied in 2019, and that it was dismissed prior to his subsequent application in 2020. He further opined that his 2019 application was essentially withdrawn when he knowingly let it lapse and did not believe that he had any further reporting obligations prior to the 2020 application. With regard to the subsequent offense in March 2019, he did not disclose it inasmuch as it was amended to a non-drug charge misdemeanor to which he pled guilty almost a year prior to the 2020 application. He indicated that the non-disclosure on the second offense was on advice of counsel. His counsel opined that the Respondent lacked probable cause for denying the Petitioner's application on the basis that there were no drug charges to disclose inasmuch as he was not ultimately convicted of either offense. He was cooperative in providing all criminal related documents requested on the 2020 application. He opines that he is a good student, would make a good teacher, is willing to complete a drug course upon request of the Court, and that he would not repeat his past marijuana use.

### **III. Conclusions of Law<sup>2</sup>**

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<sup>2</sup> Rules and Regulations herein references are those that were in effect at the time of Mr. Bush's applications in 2019

*a. PSC authority to deny applications*

1. The PSC is authorized to suspend, revoke, or deny certificates; to issue a reprimand or warning; and to monitor an educator's conduct and performance after an investigation is held and notice and opportunity for hearing have been provided. Ga. Comp. R. & Regs. 505-6-.01(5) (2019, 2020). Disciplinary action is authorized under seven categories. Ga. Comp. R. & Regs. 505-6-.01(5)(a)(1.-7.) (2019, 2020). As applied, the PSC based its adverse action on unethical conduct regarding legal compliance and honesty and upon any other good and sufficient cause that renders an educator unfit for employment as an educator. Ga. Comp. R. & Regs. 505-6-.01(5)(a)1., 2., and 7. (2019, 2020).

*b. Unethical conduct*

2. The PSC may take disciplinary action against an applicant who engages in unethical conduct as outlined in the Code of Ethics for Educators (Standards 1-10). Ga. Comp. R. & Regs. 505-6-.01(5)(a)(1) (2019, 2020). The referenced Code of Ethics for Educators is applicable to all educators including applicants who have not yet received a certificate. O.C.G.A. § 20-2-984.1; Ga. Comp. R. & Regs. 505-6-.01(2)(d) (2019, 2020). The Code of Ethics for Educators is defined under ten standards. Ga. Comp. R. & Regs. 505-6-.01(3)(a-j) (2019, 2020). Within that context, the PSC asserts that Mr. Bush violated Standard 1 regarding Legal Compliance and Standard 4 regarding Honesty.

3. An educator shall abide by federal, state, and local laws and statutes. Ga. Comp. R. & Regs. 505-6-.01(3)(a)(1) (2019, 2020). Standard 1 [Legal Compliance] of the Code of Ethics for Educators provides that unethical conduct includes in pertinent part: “the *commission* or conviction of...any other criminal offense involving the ... possession of ...marijuana as provided for in Chapter 13 of Title 16.” *Id.* A 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. *Id.* Emphasis added.

4. As applied, despite the broad definition of conviction, neither of Mr. Bush's possession of marijuana charges meet the definition. Mr. Bush's January 14, 2018 charge resulted in a dismissal

and does not otherwise meet the definition of conviction. Similarly, Mr. Bush's March 17, 2019 conviction was for failure to exercise due care, and he was not convicted of possession of marijuana. Neither charge resulted in a conviction for a drug related charge. However, Standard 1 also encompasses the *commission* of any criminal offense involving the possession of marijuana. As such, even though Mr. Bush was not *convicted* of possession of marijuana in either circumstance as that term is defined in PSC rules, he freely admitted that he had previously used and possessed marijuana and did so on the occasions in question. Accordingly, Mr. Bush violated Standard 1 on two occasions by engaging in the commission of the possession of marijuana, and the PSC was authorized to take disciplinary action against him. Ga. Comp. R. & Regs. 505-6-.01-(3)(a) (2019, 2020).

5. Standard 4 [Honesty] provides in part, "Unethical conduct includes but is not limited to, falsifying, misrepresenting, or omitting . . . professional qualifications [and] criminal history[.]" Ga. Comp. R. & Regs. 505-6-.01(3)(d) (2019, 2020). Although the evidence presented at the hearing indicates that Petitioner failed to update his initial 2019 application after being charged with a drug offense and again replied "no" on his 2020 application regarding conviction of a drug offense, he did provide all drug related documentation regarding both offenses upon request. Further, he acted on advice of counsel that he was not required to do so inasmuch as he was not convicted of either offense within the meaning of the Georgia criminal code. It is determined that Mr. Bush's actions did not violate Standard 4.

*b. Any other good and sufficient cause*

6. The PSC may also sanction an applicant for any other good and sufficient cause that renders the educator unfit for employment as an educator. Ga. Comp. R. & Regs. 505-6-.01(5)(a)(7) (2019, 2020). Although Mr. Bush is found to have violated Standard 1 as indicated above, evidence that he might repeat such behavior is speculative. The record does not establish "any other good and sufficient cause."

7. As an applicant, Mr. Bush bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1)(c). Review of the record indicates that his failure to meet this requirement with regard to two legal compliance violations of Standard 1 is a reasonable basis for sanctioning him. Nonetheless, because Mr. Bush's violations were not based on criminal convictions for drug charges, or on the Respondent's definition of conviction, but rather on his own admission that he committed such acts, coupled with his cooperation with the PSC, the undersigned finds that an

outright denial of his certificate is unwarranted.

#### IV. Decision

For reasons indicated, Respondent's denial of Petitioner's application for a teaching certificate as a result of Mr. Bush's conduct is **REVERSED**; however, **two ethical violations of Standard 1 are established. These violations will become part of his permanent record subject to disclosure to any future employer and which may be considered for future sanctions by the PSC.**

**SO ORDERED**, this 8th of March 2021.

  
  
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Steven W. Teate  
Administrative Law Judge



## **NOTICE OF FINAL DECISION**

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

### Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: [kwestray@osah.ga.gov](mailto:kwestray@osah.ga.gov); Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

### Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.