

MISSOURI STATE BOARD OF EDUCATION AGENDA ITEM:

March 2014

**CONSIDERATION TO DISCIPLINE THE
LICENSE TO TEACH OF STEVE A. BURLESON II, CASE # HR 12-003**

STATUTORY AUTHORITY:

Section 168.071, RSMo

Consent
Item

Action
Item

Report
Item

DEPARTMENT GOAL NO. 3:

Missouri will prepare, develop, and support effective educators.

SUMMARY:

Mo. Rev. Stat. §168.071 (2013) authorizes the State Board of Education to discipline certificates of license to teach, which includes the authority to resolve issues by consent agreement or agreed settlement or voluntary surrender of the certificate of license. 5 CSR 20-400.230 provides that the state board of education may accept a voluntary surrender or informally settle a case through a consent agreement or agreed settlement.

Steve A. Burluson II holds Missouri Career Continuous Professional Certificates in the areas of social science, grades 5-9 and grades 9-12.

On February 6, 2014, a settlement agreement between the Department of Elementary and Secondary Education and Steve A. Burluson II was received. The parties have agreed that this settlement agreement should be submitted to the State Board of Education for consideration.

PRESENTER(S):

Mark Allan Van Zandt, General Counsel, will participate in the presentation and discussion of this agenda item.

RECOMMENDATION:

It is recommended that the State Board of Education accept the statement of settlement submitted by the Department of Elementary and Secondary Education and Mr. Burluson and suspend his license for a period of one year.

**BEFORE THE
MISSOURI STATE BOARD OF EDUCATION**

**MISSOURI DEPARTMENT OF ELEMENTARY)
AND SECONDARY EDUCATION)**

Petitioner,)

v.)

No. HR12-003

STEVE A. BURLESON II)

Respondent.)

**JOINT MOTION FOR CONSENT ORDER, AGREED SETTLEMENT,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,
WAIVER OF HEARING BEFORE
THE MISSOURI STATE BOARD OF EDUCATION,
AND JOINTLY AGREED UPON DISCIPLINARY ORDER**

Respondent, Steve A. Burleson II ("Burleson") and Petitioner, Missouri Department of Elementary and Secondary Education ("the Department"), enter into this Joint Motion for Consent Order, Agreed Settlement, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearing Before the Missouri State Board of Education, and Jointly Agreed Upon Disciplinary Order ("Agreed Settlement") for the purpose of resolving the First Amended Complaint filed against Burleson in the above captioned case. Pursuant to the rules governing practice and procedure before the Missouri State Board of Education ("State Board") (5 CSR 20-400.230(8)), the parties move for a consent order of suspension; and waive the right to a hearing before the State Board, the

Commissioner of Education, and/or the designee of the Commissioner of Education; and waive the right to a decision in the above-styled case by the State Board, under § 168.071, RSMo Cum. Supp. 2012.¹ The parties jointly stipulate to the facts and consent to the imposition of discipline as set forth below. The parties jointly stipulate and agree that a final disposition of the above-captioned matter may be effectuated as described below.

Burleson acknowledges that he is aware of and understands the various rights and privileges afforded him by law, including: (1) the right to a hearing of the charges against him, (2) the right to appear and be represented by legal counsel, (3) the right to have all charges against him proven upon the record by competent and substantial evidence, (4) the right to cross-examine any witness appearing at the hearing against him, (5) the right to present evidence on his behalf at the hearing, (6) the right to a decision upon the record of the hearing by the State Board concerning the charges against him, (7) the right to a ruling on questions of law by the hearing officer and the State Board, and (8) the right to obtain judicial review of the decision of the State Board. Being aware of these rights provided him by operation of law, Burleson knowingly and voluntarily waives each and every one of these rights, freely enters into this Agreed

¹All statutory citations are to RSMo 2000, as supplemented, unless otherwise noted.

Settlement for the purposes of settling this matter, and agrees to abide by the terms of this document as they pertain to him.

Burleson acknowledges that he received a copy of the Complaint in this case, which the Department filed with the State Board. Solely for the purpose of resolving the dispute existing between the parties concerning the question of whether Burleson's Certificates are subject to discipline, Burleson stipulates that the factual allegations contained in this Agreed Settlement are true and stipulates with the Department that Burleson's Certificates are subject to the disciplinary action by the State Board of Education as set out below in accordance with the provisions of § 168.071, RSMo Cum. Supp. 2012 and 5 CSR 20-400.230.

The parties stipulate and agree that this document is the joint work product of the parties. The parties stipulate and agree that this document embodies the entire agreement and understanding of the parties with respect to the subject matter contained herein. The parties declare and represent that no promise, inducement, or agreement not herein expressed has been made. Burleson and the Department jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to 5 CSR 20-400.230(8).

This stipulation and the admissions contained in this Agreed Settlement are made solely for the purpose of resolving the dispute between the parties to this agreement. The parties stipulate and agree that the disciplinary order agreed to by Burleson and the Department in Part II herein is based only on the agreement set out in Part I herein. Burleson understands that the Department and/or the State Board may take, or participate in, further action against him based on facts or conduct not specifically mentioned in this document that may be discovered by the Department and/or the State Board. No further disciplinary action, aside from that set forth in this Agreed Settlement, may be taken against Burleson if the basis for the disciplinary action relates to, or is set forth in, the Department's complaint initially filed in this matter.

Based upon the foregoing, Burleson and the Department herein jointly stipulate to the following findings of fact and conclusions of law, for the purposes of settlement in this case, and request the State Board to adopt the Joint Findings of Fact and Joint Conclusions of Law as the State Board's Findings of Fact and Conclusions of Law.

I.

Joint Stipulation of Facts and Conclusions of Law

1. The Department is an agency of the state of Missouri, created and established pursuant to § 161.020, RSMo, for the purpose of administering and enforcing the provisions of Chapters 161 and 168, RSMo, governing public school personnel, including teachers and others.

2. Burleson currently holds Missouri Career Continuous Professional Certificates of License to Teach in the areas of Social Science, grades 5-9 and grades 9-12 ("Certificates").

3. Burleson's Certificates were issued by the Department on September 29, 2008, and expires on January 25, 2107. Burleson's Certificates are, and was at all relevant times, current and valid.

4. Jurisdiction and venue are proper before the State Board pursuant to § 168.071, RSMo Cum. Supp. 2012, and 5 CSR 20-400.230(8).

5. Pursuant to § 168.071.1(3), RSMo, the State Board may discipline the holder of a certificate of license to teach when "[t]here is evidence of incompetence, immorality, or neglect of duty by the certificate holder[.]"

6. Regulation 5 CSR 80-800.300 states, in part:

(1) The State Board of Education (the board) may discipline, refuse to issue, or renew a certificate of license to teach for any one (1) or combination of the following:

....

(C) Evidence of the certificate holder's incompetence, immorality, or neglect of duty;

....

(8) The board may suspend or revoke for a specified time, or indefinitely, a certificate of license to teach pursuant to the rules promulgated by the board. The board may also accept a voluntary surrender or informally settle a case through a consent agreement or agreed settlement.

7. During the 2006-2007 through the 2010-2011 school years, Burleson was employed by the Washington School District ("School District") as an instructor and coach. In the spring of 2011, Burleson was 32.

8. Student One was a Junior at Washington High School during the 2010-2011 school year. During that school year, Student One was Burleson's teaching assistant and was a sixteen year old female.

9. At all times relevant to this action, Burleson and Student One were friends through Facebook. Burleson operated two Facebook accounts; one under the name "Steve Burleson," the other under the name "Bama Smith." Burleson was friends with Student One through his Bama Smith account. All Facebook communication between the two relevant to this action occurred using Burleson's Bama Smith account. Some messages were sent during the school day.

10. In late March and early April 2011, Burleson sent inappropriate messages via Facebook to Student One and on or about April 8, 2011, Student One informed Washington High School administration that she was uncomfortable with Burleson.

11. On or about April 11, 2011, Burleson voluntarily resigned from his position with the School District.

12. The School District has a policy that prohibits harassment. It provides:

The School District of Washington Board of Education is committed to maintaining a workplace and educational environment that is free from illegal discrimination or harassment in admission or access to, or treatment or employment in, its programs, activities and facilities. Discrimination or harassment against employees, students or teachers on the basis of race, color, religion, sex, national origin, ancestry, disability, age or any other characteristic protected by law is strictly prohibited in accordance with law.

13. One or more of Burleson's Facebook messages, to the student were inappropriate, violated school policy, and constitute evidence of immorality, incompetence, and neglect of duty.

14. There was no physical contact between Burleson and Student One.

II.

Jointly Agreed Upon Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate to the resolution of this matter pursuant to § 168.071.11, RSMo, as follows:

1. The parties jointly request that the State Board issue a consent order finding that grounds exist under § 168.071.1(3), RSMo Cum. Supp. 2012, and 5 CSR 20-400.230(1)(C) to suspend Burleson's Missouri Certificates of license to teach.

2. Upon the State Board's approval of this Agreed Settlement and its issuance of a consent order, Burleson's Missouri Certificates of license to teach shall be SUSPENDED for one year.

3. At the end of the suspension period, Burleson agrees that he will submit to a criminal background check before his certificates are reinstated.

4. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and its settlement.

5. The terms of this Agreed Settlement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Agreed Settlement nor any of its provisions may be changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. The parties to this Agreed Settlement understand that the State Board will maintain this Agreed Settlement as an open record as required by Chapters 168 and 610, RSMo, as amended.

7. Nothing herein shall prohibit Burleson from working in a position that does not require a teaching certificate as a prerequisite to employment. By way of illustration and not limitation, Burleson may work as a college professor during the one-year suspension, so long as a teaching certificate is not a prerequisite to employment in such position.

8. Burleson, together with his family, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit and forever discharge the Department and the State Board, its respective officers, directors, members, employees, agents, board members, and attorneys, including former officers, directors, members, employees, agents, board

members, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, arising from the facts and allegations of this case including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to the investigation of this matter, the referral of this matter for action by the Attorney General, the litigation of this matter, or the negotiation or execution of this Agreed Settlement. Burleson acknowledges that this paragraph is severable from the remaining portions of the Agreed Settlement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this Agreed Settlement or any portion thereof void or unenforceable.

9. Burleson and the Department jointly request that the State Board approve this Agreed Settlement and suspend Burleson's Missouri Certificates of license to teach for a period of one year. This Agreed Settlement shall go into effect on the date the State Board issues a consent order approving this Agreed Settlement. If the State Board does not approve this Agreed Settlement, then

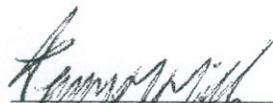
the Department may proceed to seek discipline against Burleson as allowed by law.

RESPONDENT

PETITIONER

 2-3-14
Steve A. Burleson II Date

CHRIS KOSTER
Attorney General

 2-6-14
Henry M. Miller Date
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Attorney for Burleson

Attorneys for the Department

VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF Franklin)

I, Steve A. Burleson II, of lawful age and being first duly sworn upon my oath, state that I have read the foregoing Joint Motion for Consent Order, Agreed Settlement, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearing before the Missouri State Board of Education, and Jointly Agreed upon Disciplinary Order, and that the information therein is true and correct, according to the best of my knowledge, information, and belief and that I have signed the Joint Motion for Consent Order, Agreed Settlement, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearing before the Missouri State Board of Education, and Jointly Agreed upon Disciplinary Order this day.

Steve A. Burleson II
Steve A. Burleson II

The foregoing document was subscribed and sworn to before me, this 3rd day of February, 2014.

Brenda J. Phye
Notary Public

My commission expires:
May 4, 2016

