

**CONSIDERATION TO DISCIPLINE THE
LICENSE TO TEACH OF FRANCIS M. KERN, CASE # HR 14-017**

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.

Francis M. Kern currently holds a lifetime certificate of license to teach in the areas of health, grades K-12 and physical education, grades K-12.

On May 9, 2014, a Settlement Agreement Between the Department of Elementary and Secondary Education and Francis M. Kern 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 revoke Francis Kern’s certificates based upon the settlement agreement submitted by the Department of Elementary and Secondary Education and Ms. Kern.

**SETTLEMENT AGREEMENT
BETWEEN THE
DEPARTMENT OF ELEMENTARY
AND SECONDARY EDUCATION
AND
FRANCIS M. KERN**

Francis M. Kern (“Kern”) and the Missouri Department of Elementary and Secondary Education (“the Department”) enter into this Settlement Agreement for the purpose of resolving the question of whether Kern’s certificate to teach will be subject to discipline. Pursuant to § 168.071.11, RSMo (Cum. Supp. 2013), the parties hereto waive the right to a hearing before the Missouri State Board of Education (“State Board”) under § 168.071.1, RSMo (Cum. Supp. 2013). The Department and Kern jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 168.071.11, RSMo (Cum. Supp. 2013), and 5 CSR 20-400.230(8).

Kern acknowledges that she understands the various rights and privileges afforded her by law, including: (1) the right to a hearing of the charges against her; (2) the right to appear and be represented by legal counsel; (3) the right to have all charges proven upon the record by competent and substantial evidence; (4) the right to cross-examine any witnesses appearing against her at the hearing; (5) the right to present evidence on her

Kern ✓

behalf at the hearing; (6) the right to a decision upon the record of the hearing before the State Board, the Commissioner of Education, and/or the designee of the Commissioner of Education concerning the charges against her; (7) the right to a ruling on questions of law by the Hearing Officer and/or the State Board; (8) the right to present evidence in mitigation of discipline; (9) the right to a claim for attorney fees and expenses; and (10) the right to obtain judicial review of the decision of the State Board.

Being aware of these rights provided to her by law, Kern knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Kern acknowledges that she has received a copy of documents that were the basis upon which the Department determined there was cause for discipline, along with citations to law and/or regulations the Department believes were violated. Kern stipulates that the factual allegations contained in this Settlement Agreement are true, and stipulates with the Department that Kern's certification as a teacher is subject to disciplinary action by the State Board in accordance with the provisions of Chapter 168, RSMo, as amended, and 5 CSR 20-400.230

The parties stipulate and agree that the disciplinary order agreed to by the Department and Kern in Part II herein is based only on the agreement set out in Part I herein. Kern 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). Kern understands that the Department may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the Department or may be discovered.

Based upon the foregoing, the Department and Kern herein jointly stipulate to the following findings of fact and conclusions of law and request the State Board to adopt these Joint Findings of Fact and Conclusions of Law as the State Board's Findings of Fact and Conclusions of Law.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Department and Kern herein jointly stipulate to the following:

1. The Department is an agency of the State of Missouri, created and established pursuant to § 161.020, RSMo,¹ for the purpose of

¹All statutory citations are to the 2000 Missouri Revised Statutes unless otherwise indicated.

administering and enforcing the provisions of Chapters 161 and 168, RSMo, governing public school personnel, including teachers and others.

2. Kern currently holds a lifetime certificate of license to teach in the areas of health, grades K-12, and physical education, grades K-12 (“Certificate”).

3. Kern’s certificate is, and was, current and valid at the times the acts alleged herein occurred.

4. Jurisdiction and venue are proper before the State Board pursuant to § 168.071, RSMo (Cum. Supp. 2013), and 5 CSR 20-400.230.

5. Section 168.071.1, RSMo (Cum. Supp. 2013), which authorizes the State Board to discipline a certificate holder, states in pertinent part:

1. The state board of education may . . . upon hearing, discipline the holder of a certificate of license to teach for the following causes:

(1) A certificate holder or applicant for a certificate has pleaded to or been found guilty of a felony or crime involving moral turpitude under the laws of this state, any other state, of the United States, or any other country, whether or not sentence is imposed;

6. 5 CSR 20-400.230 states in pertinent part:

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

(A) An individual has pled guilty or been found guilty of a felony or crime involving moral turpitude whether or not sentence is imposed;

...

(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. Section 168.071.11, RSMo (Cum. Supp. 2013), provides:

“Hearings, appeals or other matters involving certificate holders, licensees . . . pursuant to this section may be informally resolved by consent agreement or agreed settlement or voluntary surrender of the certificate of license pursuant to the rules promulgated by the state board of education.”

8. In the Circuit Court of St. Charles County, Missouri, case number 1111-CR00150-01, Kern was charged with the class C felony of stealing, in violation of § 570.030, RSMo.

9. The complaint in case number 1111-CR00150-01 alleged that between January 14, 2008 and June 17, 2009, Kern appropriated U.S. currency of at least \$500.00 from Joan Finn without Finn’s consent and with the intent to deprive her thereof.

10. On or about December 10, 2012, Kern pled guilty to the class C felony of stealing, based on the charges described above.

11. Section 570.030, RSMo (Cum. Supp. 2012), regarding the offense of stealing, states in pertinent part:

1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

...

3. Notwithstanding any other provision of law, any offense in which the value of property or services is an element is a class C felony if:

(1) The value of the property or services appropriated is five hundred dollars or more but less than twenty-five thousand dollars[.]

...

8. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

12. As a result of Kern's guilty plea in case number 1111-CR00150-01, the court suspended execution of Kern's sentence and placed Kern on probation for five years. In addition, the court ordered Kern to pay \$5,000.00 at the time of her plea and \$250.00 a month in restitution while on probation.

13. Cause exists to discipline Kern's certificate of license to teach under § 168.07.1(1), RSMo (Cum. Supp. 2013), and 5 CSR 20-400.230(1)(A) because Kern pled guilty to a felony and an offense involving moral turpitude

**II.
Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board in this matter under the authority of § 168.071.1 and .11, RSMo (Cum. Supp. 2013).

14. **Kern's certification as a teacher is revoked and all indicia of certification shall be surrendered immediately.** Kern's certification as a teacher is hereby REVOKED and ALL INDICIA OF certification SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

15. Kern further agrees that after the revocation of her certificate, she will not seek another certificate to teach in the State of Missouri.

16. This Settlement Agreement does not bind the Department and/or the State Board or restrict the remedies available to it concerning any future violations by Kern of Chapter 168, RSMo, as amended, or the regulations

promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

17. This Settlement Agreement does not bind the Department and/or the State Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Department and/or the State Board or may be discovered.

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

19. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement 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.

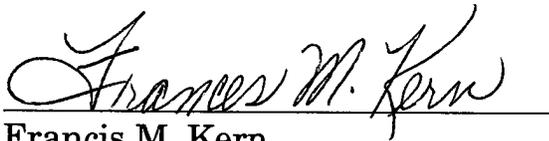
20. The parties to this Settlement Agreement understand that the Department will maintain this Settlement Agreement as an open record of the Department as required by Chapter 610, RSMo, as amended.

21. Kern, together with her heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit, and forever discharge the Department and the State Board, its respective members, employees, agents, and attorneys, including former members, employees, agents, and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, 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 any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

22. Kern understands that this Settlement Agreement will be submitted to the State Board for approval.

23. This Settlement Agreement shall become effective on the date the State Board issues its order approving this Settlement Agreement. If the State Board does not approve this Settlement Agreement, then the Department may proceed to seek discipline against Kern as allowed by law.

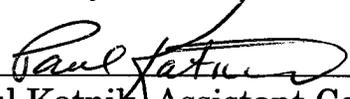
Certificate Holder



Francis M. Kern

Date: 4/27/14

Department of Elementary and
Secondary Education


Paul Katnik, Assistant Commissioner

Date: 5/9/14

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