

**CONSIDERATION TO DISCIPLINE THE  
LICENSE TO TEACH OF BRYAN DAVID KOERNER, CASE # HR 14-016**

**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.

Bryan David Koerner holds a career professional certificate of license to teach in the area of music-instrumental, grades K-12.

On May 1, 2014, a Settlement Agreement Between the Department of Elementary and Secondary Education and Bryan Koerner was received. The parties have agreed that this settlement 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 Bryan Koerner's certificate based upon the settlement agreement submitted by the Department of Elementary and Secondary Education and Mr. Koerner.

**SETTLEMENT AGREEMENT BETWEEN THE**  
**DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**  
**AND**  
**BRYAN DAVID KOERNER**

Bryan David Koerner ("Koerner") and the Department of Elementary and Secondary Education ("DESE") enter into this Settlement Agreement for the purpose of resolving the question of whether Koerner's certificate to teach will be subject to discipline. Pursuant to § 168.071.11, RSMo 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 Supp. 2013. DESE and Koerner jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 168.071.11, RSMo Supp. 2013, and 5 CSR 20-400.230(8).

Koerner acknowledges that he 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 proven upon the record by competent and substantial evidence; (4) the right to cross-examine any witnesses appearing against him at the hearing; (5) the right to present evidence on his 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

him; (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 him by law, Koerner 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 him.

Koerner acknowledges that he has received a copy of documents that were the basis upon which DESE determined there was cause for discipline, along with citations to law and/or regulations DESE believes were violated. Koerner stipulates to the factual allegations contained in this Settlement Agreement for settlement purposes only and stipulates with DESE that Koerner's certificates as a teacher are 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 DESE and Koerner in Part II herein is based only on the agreement set out in Part I herein. Koerner and DESE 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). Koerner understands that DESE and/or the State Board may take, or participate in, further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to DESE and/or the State Board or may be discovered.

Based upon the foregoing, DESE and Koerner herein jointly stipulate to the following findings of fact and conclusions of law, for the sole purpose of settlement in this matter, 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**

1. The Department of Elementary and Secondary Education ("DESE") is an agency of the State of Missouri, created and established pursuant to §161.020, RSMo,<sup>1</sup> for the purpose of administering and enforcing the provisions of Chapters 161 and 168, RSMo, governing public school personnel, including teachers and others.

2. Respondent, Bryan Koerner ("Koerner") currently holds a Career CPC certificate of license to teach in the area of music-instrumental, grades K-12 ("Certificate").

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<sup>1</sup> All statutory citations are to the 2000 Missouri Revised Statutes as amended unless otherwise indicated.

3. Koerner's Certificate was issued by DESE on May 16, 2012. Koerner's Certificate is, and was at all relevant times, current and valid.

4. Jurisdiction and venue are proper before the Missouri State Board of Education (the "Board") pursuant to § 168.071, RSMo, and 5 CSR 20-400.230.

5. Section 168.071.1, RSMo Supp. 2013, authorizes the Board to discipline a certificate if there is evidence of incompetence, immorality, or neglect of duty by the certificate holder. Section 168.071, RSMo Supp. 2013, states, in part:

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

\* \* \*

(3) There is evidence of incompetence, immorality, or neglect of duty by the certificate holder[.]

6. State Regulation 5 CSR 20-400.230, provides, 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.

7. During the 2012-2013 school year, Koerner taught music to several different grade levels in the Centralia R-VI School District ("School District").

8. Koerner had a cadet teacher, Student One, who assisted him during the second semester of the 2012-2013 school year.

9. Student One alleged that during the second semester, Koerner acted inappropriately toward her.

10. Student One alleged that the inappropriate actions all took place behind closed doors.

11. In signing the Teacher's Contract with the School District for the 2012-2013 school year, Koerner acknowledged that he was aware of the School District's policies.

12. The School District policy states:

**Failure to Maintain Boundaries**

Unless an education purpose exists or an exception as defined in this policy applies, examples of situations where professional physical and emotional boundaries are violated include, but are not limited to:

1. Being alone with a student in a room with a closed or locked door.

13. On or about May 20, 2013, the School District placed Koerner on administrative leave.

14. Koerner later resigned his position, and is no longer employed with the School District.

15. Koerner's conduct if proven to be true, would violate School District policy and/or is evidence of incompetence, immorality, or neglect of duty providing cause to discipline his Certificate to teach pursuant to §168.071.1(3) RSMo Supp. 2013, and 5 CSR 20-400.230.

## 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 Supp. 2013.

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

17. Koerner further agrees that after the surrender of his Certificate, he will not seek another certificate to teach in the State of Missouri.

18. This Settlement Agreement does not bind DESE and/or the State Board or restrict the remedies available to it concerning any future violations by Koerner of Chapter 168, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

19. This Settlement Agreement does not bind DESE 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 DESE and/or the State Board or may be discovered.

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

21. 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.




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

23. Koerner, together with his family, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit, and forever discharge DESE, 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.

24. Koerner understands that this Settlement Agreement will be submitted to the State Board for approval.

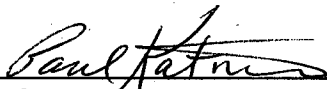
25. This Settlement Agreement shall become effective on the date the State Board issues its order approving this Settlement Agreement. If the State Board does not approve this Settlement Agreement, then DESE may proceed to seek discipline against Koerner as allowed by law.

LICENSEE

  
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Bryan David Koerner

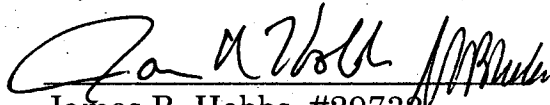
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DEPARTMENT OF  
ELEMENTARY AND  
SECONDARY EDUCATION

  
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Paul Katnik  
Assistant Commissioner

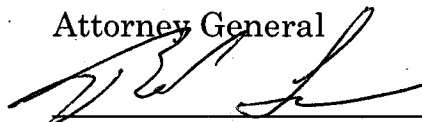
Date: 5-1-14

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