

MISSOURI STATE BOARD OF EDUCATION AGENDA ITEM

June 2017

CONSIDERATION OF DISCIPLINARY ACTIONS BY STIPULATION

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 authorizes the State Board of Education to discipline certificates of license to teach, which includes the authority to resolve issues by consent agreement, agreed settlement or voluntary surrender of the certificate of license. Rule 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.

The Office of the Attorney General has negotiated settlements in the attached cases which provide for either a stipulated revocation of the respondent’s certificate of license to teach or the voluntary surrender of that license in lieu of discipline.

PRESENTER:

William R. Thornton, 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 following settlement agreements submitted by the Department of Elementary and Secondary Education:

- DESE v. Nicholas Renfrow, HR 17-003
- DESE v. David R. Diekamp, HR 17-004

DISCIPLINARY ACTIONS BY STIPULATION
June 2017

Case	Case Number	Certificate(s)	Offense(s)	Date of Incident or Court Action	Action
DESE v. Nicholas Renfrow	HR 17-003	Certificate of license to teach Social Science, grades 9-12	Engaged in conduct which constitutes evidence of incompetence, immorality, or neglect of duty	November 3, 2014	Revoke and Surrender
DESE v. David R. Diekamp	HR 17-004	Certificate of license to teach Commercial Art, grades S-P and a substitute certificate	Exchanged text messages of a sexual nature with a student, which constitutes evidence of incompetence, immorality, or neglect of duty	May 2015	Voluntary Surrender

SETTLEMENT AGREEMENT BETWEEN THE
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
AND
NICHOLAS RENFROW

Nicholas Renfrow (“Renfrow”) and the Department of Elementary and Secondary Education (the “Department”) enter into this Settlement Agreement for the purpose of resolving the question of whether Renfrow’s certificate to teach will be subject to discipline. Pursuant to § 168.071.11, RSMo Supp. 2014, the parties hereto waive the right to a hearing before the Missouri State Board of Education (“State Board”) under § 168.071.1, RSMo Supp. 2014. The Department and Renfrow jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 168.071.11, RSMo Supp. 2014, and 5 CSR 20-400.230(8).

Renfrow 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, Renfrow 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.

Renfrow acknowledges that he 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. Renfrow stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Department that Renfrow'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 the Department and Renfrow in Part II herein is based only on the agreement set out in Part I herein. Renfrow 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). Renfrow understands that the Department 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 the Department and/or the State Board or may be discovered.

Based upon the foregoing, the Department and Renfrow herein jointly stipulate to the following findings of fact and conclusions of law, for the 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 (the “Department”) is an agency of the State of Missouri, created and established pursuant to §161.020, RSMo,¹ 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, Nicholas Renfrow (“Renfrow”) currently holds a Social Science 9-12 certificate to teach.

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

3. 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.

4. Section 168.071.1, RSMo Supp. 2014, 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. 2014, 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;

* * *

5. 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.

6. Renfrow engaged in conduct which constitutes evidence of incompetence, immorality, or neglect of duty, and is cause to discipline his Certificate pursuant to §168.071.1(3), RSMo, and 5 CSR 20-400.230(1)(C) and (8).

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. 2014.

7. **Renfrow’s teaching certificates are hereby REVOKED.** ALL INDICIA OF CERTIFICATIONS SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

8. Renfrow further agrees that after the revocation of his Certificate, he will not seek another certificate to teach in the State of Missouri.

9. 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 Renfrow of Chapter 168, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

10. 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.

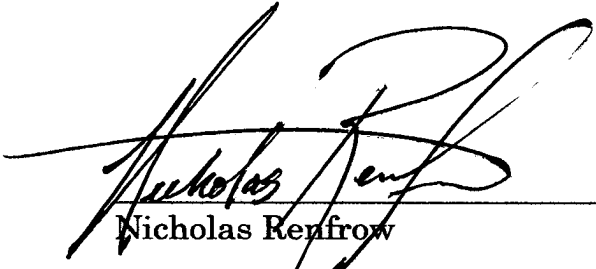
11. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

12. 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.

13. 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.

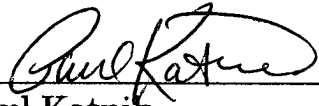
approve this Settlement Agreement, then the Department may proceed to seek discipline against Renfrow as allowed by law.

LICENSEE



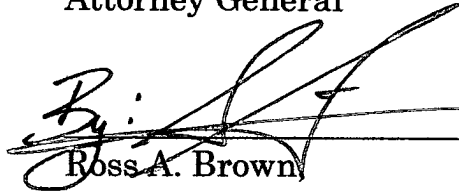
Nicholas Renfrow
Date: 4/17/17

DEPARTMENT OF
ELEMENTARY AND
SECONDARY EDUCATION



Paul Katnik
Assistant Commissioner
Date: _____

JOSHUA D. HAWLEY
Attorney General



Ross A. Brown
Assistant Attorney General
Missouri Bar No. 62771

P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-4037
Telefax: 573-751-5660

Attorneys for the Department

Scott Suptie
Assistant Attorney General
Missouri Bar No. 65195
for Ross A. Brown

SETTLEMENT AGREEMENT BETWEEN THE
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
AND
DAVID R. DIEKAMP

David R. Diekamp (“Diekamp”) and the Department of Elementary and Secondary Education (the “Department”) enter into this Settlement Agreement for the purpose of resolving the question of whether Diekamp’s certificate to teach will be subject to discipline. Pursuant to § 168.071.11, RSMo Supp. 2014, the parties hereto waive the right to a hearing before the Missouri State Board of Education (“State Board”) under § 168.071.1, RSMo Supp. 2014. The Department and Diekamp jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 168.071.11, RSMo Supp. 2014, and 5 CSR 20-400.230(8).

Diekamp 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, Diekamp 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.

Diekamp acknowledges that he 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. Diekamp stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Department that Diekamp'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 the Department and Diekamp in Part II herein is based only on the agreement set out in Part I herein. Diekamp 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). Diekamp understands that the Department 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 the Department and/or the State Board or may be discovered.

Based upon the foregoing, the Department and Diekamp herein jointly stipulate to the following findings of fact and conclusions of law, for the 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,¹ for the purpose of administering and enforcing the provisions of Chapters 161 and 168, RSMo, governing public school personnel, including teachers and others.

¹ All statutory citations are to the 2010 Missouri Revised Statutes as amended unless otherwise indicated.

2. Respondent, David R. Diekamp (“Diekamp”) currently holds a certification to teach in Commercial Art, grades S-P, as well a substitute certificate of license to teach.

3. 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.

4. Section 168.071, RSMo, 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;

.....

5. 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.

6. In May, 2015, Diekamp was an instructor at Macon R-1 School. Among his students was A.C..

7. In May, 2015, Diekamp engaged in a series of text messages with A.C. which were sexual in nature.

8. Diekamp's conduct in exchanging text messages of a sexual nature with A.C., constitutes evidence of immorality, a neglect of duty, and cause to discipline his Certificate pursuant to §168.071.1(3), RSMo, and 5 CSR 20-400.230(1)(C) and (8).

9. Based upon the foregoing, cause exists to discipline Diekamp's certificates pursuant to § 168.071.1(1), RSMo Supp. 2014, and 5 CSR 20-400.230(1)(A) and (8)..

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. 2014.

10. **Diekamp is hereby allowed to voluntarily surrender his teaching certificates in lieu of any other discipline that may be imposed by the State Board of Education.** ALL INDICIA OF CERTIFICATIONS SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

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

12. 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 Diekamp of Chapter 168, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

13. 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.

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

15. 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.

16. 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.

17. Diekamp, together with his family, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit, and forever discharge the Department, 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.

18. Diekamp understands that this Settlement Agreement will be submitted to the State Board for approval.

19. This Settlement Agreement shall become effective on the date the State Board approves this Settlement Agreement. If the State Board does not approve this Settlement Agreement, then the Department may proceed to seek discipline against Diekamp as allowed by law.

LICENSEE

DEPARTMENT OF
ELEMENTARY AND
SECONDARY EDUCATION



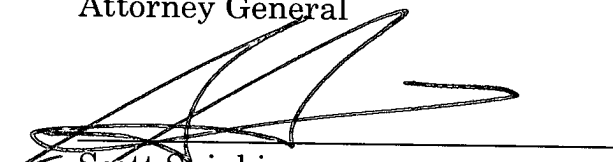
David R. Diekamp

Paul Katnik
Assistant Commissioner

Date: 4/27/17

Date: 5-4-17

JOSHUA D. HAWLEY
Attorney General



Scott Shipkie,
Assistant Attorney General
Missouri Bar No. 65195

P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-9199
Telefax: 573-751-5660

Attorneys for the Department