

**COMMONWEALTH OF KENTUCKY
EDUCATION PROFESSIONAL STANDARDS BOARD
AGENCY CASE NO. 20-03725
CERTIFICATE NO. 200301086
ADMINISTRATIVE ACTION NO. 22-EPSB-0162**

EDUCATION PROFESSIONAL STANDARDS BOARD

PETITIONER

VS.

KIMBERLY JOHNSON

RESPONDENT

PETITIONER’S MOTION FOR PARTIAL SUMMARY JUDGMENT

The Education Professional Standards Board (EPSB), by and through counsel, moves the Hearing Officer to grant Petitioner partial summary judgment pursuant to CR 56. In support of this motion, Petitioner states as follows:

Summary judgment is appropriate when there is not a genuine issue of material fact, which promotes expeditious disposition of cases and avoids unnecessary hearings. *Young v. White*, 551 S.W.2d 12 (Ky. App. 1977). Insignificant fact disputes do not preclude summary judgment. *Blue Cross & Blue Shield of Ky., Inc. v. Baxter*, 713 S.W.2d 478 (Ky. App. 1986).

Respondent’s admissions to certain conduct warrants a finding that there is not a genuine issue of material fact. Petitioner has met the burden of proving Respondent violated ethical standards because Respondent does not deny her actions. Respondent argues that the conduct of others should mitigate the sanctions against her, however, as a matter of law, the conduct of others is not a determining factor pursuant to 16 KAR 1:030 Section 2(3)f and thus, it is irrelevant.

(A) Respondent Admits the Allegations in Count One, Count Five, Count Ten, Count Fourteen.

Respondent returned a shaving razor, which is a dangerous sharp object, to an elementary student she was aware had a history of comments about self-harm. A substitute teacher alerted

Respondent, the school counselor, that a student had a disposable shaving razor in his backpack. (Respondent's Motion to Dismiss, p. 30). Respondent "worried about the student's mental health as he told Johnson that he was being made fun of because he could not read." *Id.* at 29-30. She admits that "[p]rior to December 9, 2019, this student stated to Johnson on several occasions that he mentions self-harm because he cannot read and his teachers were not teaching him how to read." *Id.* at 36 (emphasis added). She further admits that "she put the disposal razor back into the student's backpack." *Id.* at 31. Respondent's admissions warrant summary disposition of Counts One, Five, Ten, and Fourteen.

Respondent fails to understand that an elementary age student has no plausible reason to have his mother's shaving razor in his backpack at school and that his prior comments of self-harm should indicate to a school counselor that the shaving razor may be used to for self-harm. Instead, Respondent argued multiple irrelevant and objectionable paragraphs about the conduct of the mental health practitioner, principal, and events from the prior school year. Respondent's statements in her Motion to Dismiss show she has a limited insight into her shortcomings and fails to see that her conduct was incompetent, undignified, and carelessly disregarded the health, welfare, and safety of the student.

Respondent's action of intentionally returning a disposable shaving razor to an elementary aged student that Respondent was aware had a history of making several comments about self-harm is a serious violation because Respondent's actions could have resulted in serious physical injury or death of the student. Training would not prevent future violations because Respondent is unable to appreciate any shortcomings in her judgment. Therefore, her blatant failure to perceive the seriousness of her conduct and her failure to accept responsibility for actions warrants a

revocation of her Professional Certificate for Instructional Leadership – Principal All Grades, Level 2, and School Counselor, All Grades Certification to deter future violations.

Therefore, because Respondent’s arguments related to Counts One, Five, Ten, and Fourteen are irrelevant and she admits her conduct, Petitioner is entitled to an award of partial summary judgment. Respondent’s conduct related to Counts One, Five, Ten, and Fourteen alone warrants the sanctions requested in Petitioner’s Notice of Administrative Hearing and Statement of Charges and Issues.

(B) There Is Not a Genuine Issue of Material Fact Regarding Count Twenty, Count Twenty-One, Count Twenty-Two, and Count Twenty-Three.

Respondent, 504 Plan Chair of Maupin Elementary, failed to properly implement a 504 Plan for a kindergarten student she was aware had sickle cell anemia. KRS 157.195 mandates that “all students of the Commonwealth have a right to an appropriate and quality education.”

Respondent was aware of the student’s condition and knew that the student should have a 504 Plan to accommodate her medical needs. On or around August 25, 2019, the student’s grandmother stated to her that the student was “in a sickle cell crisis.” (Respondent’s Motion to Dismiss, p. 60). Moreover, Respondent references a “physician’s form 8/26/2019” that documented the student had sickle cell anemia in August of 2019. *Id.* at p. 71. Respondent further provided that on September 27, 2019, “Johnson discussed a 504 Plan for [the student]” with the student’s mother. *Id.* at p. 61-62. The principal followed up with her multiple times regarding implementing a 504 Plan throughout January and February of 2020 and Respondent failed to implement the plan. *Id.* at 62-63.

Respondent’s failure to properly implement a plan resulted in the student having 31 or more unexcused absences without a proper plan to provide accommodations that addressed the student’s medical needs to allow the student to master the material the student missed. The

unexcused absences resulted in the denial of the opportunity for the student “to do make-up work resulting in the low grades listed on her report card and detailed on the Referral for Multi-Disciplinary Evaluation[.]” *Id.* at 69-70. She further admits that “[t]his student’s special education services were denied and delayed for months.” *Id.* at 71. Respondent’s failure to timely implement a 504 plan to accommodate the student’s medical needs resulted in the school failing to provide the student with an appropriate education in violation of KRS 157.195.

Respondent had the duty to timely implement the 504 Plan because she was the 504 Plan Chair. Respondent never scheduled a meeting or completed a referral to begin the process despite the parent requesting a 504 Plan for their child. *Id.* at 62-64. Respondent admits that “[o]n January 13, 2020, Kimbrough sent Johnson an email stating the following: [‘]Hello Dr. Johnson, Mom was wondering if you could follow back up with her at your earliest convenience regarding scheduling the 504 plan meetings.’” *Id.* at 62-63. She also stated she asked Dr. Tanya Bailey, the district’s 504 plan specialist, “if a student can have a 504 Plan for her medical condition and also an IEP for speech.” *Id.* at 63. The district specialist responded, “[i]f the student qualifies for an IEP, all services should be documented on the IEP including what would otherwise be 504 accommodations.” *Id.* at 63. Respondent neglected to include Dr. Bailey’s other email which stated, “[i]f the student is in need of accommodations and you don’t know the outcome of the evaluation, you may want to consider a 504 plan in the meantime.” *See* February 5, 2020, Email from Dr. Tanya Bailey attached hereto as Petitioner’s Exhibit 1. Respondent admits that on February 19, 2020, Principal Kimbrough sent a second email checking on the status of the 504 Plan. *Id.* at 64. Respondent continued to fail to schedule a meeting. *Id.* As a result of her neglect, other school personnel scheduled and held a meeting without Respondent to ensure the student could receive the necessary services. *Id.* at 71.

Respondent attempts to blame others when she was the individual that failed the student. She had or could have easily retrieved the requisite documentation and information to complete the Section 504 Referral Form and schedule the meeting for a 504 Plan in August of 2019 and failed to do so. Respondent argues that other individuals in the school should have implemented an Individualized Education Plan, however, this was the student's first year in school and there was not sufficient data to suggest the student needed remedial instruction in the first few months of school.

Respondent's neglect of duty resulting in a student not receiving proper accommodations to address the student's medical needs and violation of state law is a serious violation. Per Respondent's admission, the student was unable to make-up work due to at least 31 unexcused absences. The student also missed instruction time causing the student to fall behind and require remedial services. Training would not prevent future violations because Respondent is unable to appreciate any shortcomings in her judgment. Therefore, her blatant failure to perceive that her conduct was bad judgment warrants a revocation of her Professional Certificate for Instructional Leadership – Principal All Grades, Level 2, and School Counselor, All Grades Certification to deter future violations.

Therefore, because there is no genuine issue of material fact related to the allegations in Counts Twenty, Twenty-One, Twenty-Two, and Twenty-Three, Petitioner is entitled to an award of partial summary judgment. Respondent's conduct related to Counts Twenty, Twenty-One, Twenty-Two, and Twenty-Three alone warrants the sanctions requested in Petitioner's Notice of Administrative Hearing and Statement of Charges and Issues.

WHEREFORE, since the facts upon which a recommendation can be made herein are not in dispute, it is appropriate for the Hearing Officer to enter Summary Judgment on Counts One,

Five, Ten, Fourteen, Twenty, Twenty-One, Twenty-Two, and Twenty-Three as a matter of law. Accordingly, Petitioner respectfully requests that the Hearing Officer recommend an Order granting partial summary judgment plus any and all other relief in which Petitioner may be entitled.

COMMONWEALTH OF KENTUCKY
EDUCATION PROFESSIONAL STANDARDS BOARD

By: /s/ Cody Hollan
Hon. Cody Hollan
Attorney
Education Professional Standards Board
300 Sower Blvd., 5th Floor
Frankfort, Kentucky 40601
Phone: (502) 564-4606
Fax: (502) 564-7080

Certificate of Service

I hereby certify that a copy of the foregoing was hand delivered to the EPSB and was sent by email this 10th day of January 2023 to the following:

Administrative Hearings Branch
OAG.AHB@ky.gov

Dr. Kimberly Johnson
kimberlymuckerjohnson@gmail.com

/s/ Cody Hollan
Hon. Cody Hollan

Get [Outlook for Android](#)

From: Bailey, Tanya M <tanya.bailey@jefferson.kyschools.us>
Sent: Wednesday, February 5, 2020 12:57:38 PM
To: Jacoby, William <william.jacoby@jefferson.kyschools.us>; Johnson, Kimberly A <kimberly.johnson2@jefferson.kyschools.us>; Scott, Nan P <nan.scott@jefferson.kyschools.us>
Cc: Kimbrough, Charita C <charita.kimbrough@jefferson.kyschools.us>
Subject: RE: 504

If the student is in need of accommodations and you don't know the outcome of the evaluation, you may want to consider a 504 plan in the meantime. It would be wise to speak with the nurse practitioner for guidance.

Tanya M. Bailey, Ed. D.

Section 504 Coordinator
Exceptional Child Education (ECE)
Jefferson County Public Schools
4332 Newburg Road
Louisville, KY 40218
Phone: (502)485-6790

tanya.bailey@jefferson.kyschools.us



"We delight in the beauty of the butterfly, but rarely admit the changes it has gone through to achieve that beauty." Maya Angelou

CONFIDENTIALITY STATEMENT:

This email message, including any attachment(s) is for the sole use of the intended recipient(s) and may contain confidential information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please delete.

From: Jacoby, William <william.jacoby@jefferson.kyschools.us>
Sent: Wednesday, February 5, 2020 12:17 PM
To: Bailey, Tanya M <tanya.bailey@jefferson.kyschools.us>; Johnson, Kimberly A <kimberly.johnson2@jefferson.kyschools.us>; Scott, Nan P <nan.scott@jefferson.kyschools.us>
Cc: Kimbrough, Charita C <charita.kimbrough@jefferson.kyschools.us>
Subject: RE: 504

Ok, thank you. The student began the evaluation process for SLI on 2/3/2020. So the eligibility meet will be held on or before 5/7/2020. Should there be a 504 in place until that meeting or do we wait until the eligibility meeting?

From: Bailey, Tanya M <tanya.bailey@jefferson.kyschools.us>
Sent: Wednesday, February 5, 2020 11:51 AM
To: Johnson, Kimberly A <kimberly.johnson2@jefferson.kyschools.us>; Jacoby, William <william.jacoby@jefferson.kyschools.us>; Scott, Nan P <nan.scott@jefferson.kyschools.us>
Cc: Kimbrough, Charita C <charita.kimbrough@jefferson.kyschools.us>
Subject: RE: 504

Good morning,