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**Arthur Mulkey**  
**Permanent Revocation/Voluntary Surrender**

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**The Background:**

*Prior History:* N/A

*Facts:* On April 30, 2018, Mr. Mulkey, an high school teacher at Rossvie High School within Clarksville-Montgomery County Schools ("CMCSS"), was reported to the Board by CMCSS for allegations of inappropriate physical contact and communication with student(s). The allegations included, but are not limited to, during the 2017-2018 school year, Mr. Mulkey kissed a female student on the lips, rubbed the same said female student on the leg, told said female student that she was beautiful, and told said female student that if he was her age, he would be with her. The student in question was fifteen (15) years old. Mr. Mulkey retired from CMCSS on May 23, 2018. On January 31, 2020, in the Criminal/Circuit Court for Montgomery County, Tennessee, Mr. Mulkey pled no contest to two (2) counts of sexual contact with a minor by an authority figure, pursuant to Tenn. Code Ann. § 39-13-509. On August 12, 2020, an Order of Deferral (Judicial Diversion) was entered to each count of sexual contact with a minor by an authority figure, ordering Mr. Mulkey to one (1) year of supervised probation for the first count and six (6) months of supervised probation for the second count, consecutive to the first.

*Applicable Rule:* 0520-02-03-.09(1)(a) defines Conviction as a judgment entered by a court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. Conviction includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction, or other country. Conviction also includes a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction.

0520-02-03-.09(1)(c) defines explicit inappropriate communication as any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity. This shall not be construed to prevent an educator from communication regarding sexual or illicit activities for educational purposes such as in teaching family- life curriculum pursuant to T.C.A. §§ 49-6-1307 et seq. or drug abuse resistance education pursuant to T.C.A. § 49-1-402.

0520-02-03-.09(1)(d) defines inexplicit inappropriate communication any communication between an educator and a student that is beyond the scope of the educator's professional responsibilities. Examples of such non-explicit inappropriate

communications include, but are not limited to, those communications that discuss the teaching staff member's or student's past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish an inappropriate personal relationship with a student; and those that are related to personal or confidential information regarding another school staff member or student.

0520-02-03-.09(1)(e) defines inappropriate physical contact as unlawful, unnecessary, and/or unjustified physical contact with a student. Examples of such unnecessary and unjustified contact include, but are not limited to sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.

0520-02-03-.09(1)(f) defines inappropriate physical contact with harm as inappropriate physical contact as described in subparagraph (e) above that results in physical or mental harm or the potential of physical or mental harm to a student.

0520-02-03-.09(1)(k) defines Other Good Cause as conduct that calls into question the fitness of an educator to hold a license including, but not limited to, noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, failure to report licensure actions as required under paragraph (2), or violation of any provision in the Teacher Code of Ethics as contained in T.C.A. §§ 49- 5-1001, et seq.

0520-02-03-.09(1)(l) defines Permanent Revocation as the nullification of an educator's license without eligibility for future restoration.

0520-02-03-.09(3)(e) provides that the Board may revoke, suspend, formally reprimand or refuse to issue or renew an educator's license for inappropriate physical contact.

0520-02-03-.09(3)(g) provides that the Board may revoke, suspend, formally reprimand, or refuse to issue or renew an educator's license for other good cause as defined in subparagraph (1)(k) of this rule.

0520-02-03-.09(3)(h) provides that the Board may revoke, suspend, formally reprimand, or refuse to issue or renew an educator's license for any offense contained in paragraphs (4) and/or (5) of this rule.

0520-02-03-.09(5)(a)(5)(i) provides that an individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.

0520-02-03-.09(5)(a)(5)(ii) provides that an individual holding an educator's license who is found to have engaged in inappropriate communication of an explicit nature with a student shall be subject to permanent revocation.

0520-02-03-.09(5)(6)(i) provides that an individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does not

result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a formal reprimand up to and including suspension for two (2) years.

0520-02-03-.09(5)(a)(6)(ii) provides that an individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a two (2) year suspension up to and including permanent revocation.

0520-02-03-.09(5)(a)(8) provides that an individual holding an educator's license who is found to have violated the teacher code of ethics shall be subject to a disciplinary action within the range of a suspension for no less than one (1) year up to and including revocation.

T.C.A. § 49-5-1003(b)(4) and (b)(15) provides that an educator shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety, and not engage in any sexually related behavior with the student, whether verbal, written, physical, or electronic, with or without the student's consent.

*Status:* Respondent was notified by certified mail of the Board's intent to **permanently revoke** his educator license based upon these findings. Respondent received said notice.

**Board Action Consistency Considerations:**

July 2019 – Board approved the voluntary surrender of an educator's license for sexual communication with a student.

November 2019 – Board approved the voluntary surrender of an educator's license for inappropriate communication with a student when the educator discussed his marriage relationship with the student and asked the student to come to his house.

**The Recommendation:**

The Board staff recommends that the Board approve the signed Consent Order submitted by the Respondent based upon the facts and applicable rule noted above.