

BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

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| LILIANA ALVAREZ, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. _____ |
| |) | |
| TENNESSEE STATE BOARD OF EDUCATION |) | |

**PETITION FOR DECLARATORY ORDER AS TO VALIDITY OF
PARTICULAR STATE BOARD OF EDUCATION RULE**

Petitioner brings this Petition for Declaratory Order as the Validity of Rule 0520-02-03-.09(1)(a) and the definition of “conviction” for purposes of sanctioning educator’s licenses under its Rule 0520.02-03-.09(5)(a)(2)(i). The State Board should declare the Rule 0520-02-03-.09(1)(a) void as it attempts to repeal or negatively affect T.C.A. §40-35-313, the statute authorizing diversion for those charged with crimes.

1. Petitioner is Liliana Alavarez.
2. Petitioner’s address is 332 Dugger Dr., Clarksville, Tennessee 37042.

Counsel’s address is listed below.

3. Declaratory Judgment is sought regarding the application of T.C.A. §40-35-313 to revoke Respondent’s teaching license. The Board acts or purports to act pursuant to Rule 0520-02-03-.09(1)(a) (the challenged Rule) and Rule (5)(a)(2)(i), but Respondent has applied for and been granted Judicial Diversion.

4. State Board of Education Rule 0520-02-03-.09(1)(a) defines “conviction” to include judicial diversion. The Rule cites the diversion statute, T.C.A. §40-35-313, and purports to grant authority to the Board to revoke a teaching license based

upon a plea taken under the statute.

5. The Tennessee Supreme Court's decision in *Jose Rodriguez v. State of Tennessee*, 437 S.W.3d 450, holds that a Board is not authorized to invoke additional punitive action against Respondent, including license revocation.

6. The State Board of Education, by promulgating a Rule, cannot override or repeal legislation enacted by the General Assembly.

7. In *Deweese v. Board of Funeral Directors & Embalmers*, 1994 Tenn. App. Lexis 213 (1994), the Court declared:

A department or agency of the State created by the legislature cannot by the adoption of rules be permitted to thwart the will of the legislature. The legislature is elected by the citizens of Tennessee and as an elected body it speaks for the people on matters of public policy of the state. Unelected officers of a department or agency cannot adopt rules to circumvent statutes passed by the legislature. The powers to make the laws of the state are vested in the general assembly and not in administrative agencies of the state, even when the administrative agency properly promulgates rules and regulations (citation omitted).

8. The State Board of Education has filed an administrative action against Petitioner, *In the Matter of: Liliana Alvarez*, No. 07.02-233872 (attached), where it purports to do or is attempting to revoke her teaching license in violation of the diversion statute, T.C.A. §40-35-313. The State Board's Motion for Summary Judgment is pending and Alvarez has defended based on the diversion statute and other procedural issues; however, the application of the diversion statute will greatly affect or be dispositive in that administrative action.

Prayer for Relief:

Wherefore, Petitioner Alvarez prays for the following relief:

1. That the State Board of Education issue a declaratory order in this matter.
2. That the State Board of Education find and declare that Rule 0520-02-03-.09(1)(a) and the definition of “conviction” therein is not valid, in whole or in part, due to its conflict and attempt to repeal in part the diversion statute, T.C.A. §40-35-313.
3. That the State Board of Education direct that the administrative proceeding against Alvarez, *In the Matter of: Liliana Alvarez*, No. 07.02-233872, be dismissed.

Respectfully submitted,

/s/Perry A. Craft

Perry A. Craft, BPR # 006056

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Counsel for Petitioner Liliana Alvarez

Dated: August 7, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was forwarded to the following parties in interest by prepaid First-Class U.S. Mail and email on this 7th day of August, 2023.

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