

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 99-0753
)
MARGARET B. MITCHELL,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, William J. Kendrick, held a formal hearing in the above-styled case on October 19, 1999, in Miami, Florida.

APPEARANCES

For Petitioner: Madelyn P. Schere, Esquire
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For Respondent: Lisa N. Pearson, Esquire
United Teachers of Dade
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STATEMENT OF THE ISSUE

At issue in this proceeding is whether Respondent committed the offenses set forth in the Notice of Specific Charges and, if so, what disciplinary action should be taken against her.

PRELIMINARY STATEMENT

On February 10, 1999, Petitioner, School Board of Miami-Dade County (School Board), suspended Respondent, Margaret B. Mitchell, from employment and initiated dismissal proceedings against her. Respondent filed a timely request for a hearing to challenge the School Board's action, and the matter was referred to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

By Notice of Specific Charges, filed March 3, 1999, the School Board charged that Respondent, a teacher employed pursuant to a continuing contract at Barbara Goleman Senior High School, engaged in the following misconduct:

5. On or about October 8, 1997, Respondent copied and/or distributed a portion of the 1997-98 Florida High School Competence Test (HSCT) in violation of § 228.301, Fla. Stat., and State Board of Education Rule 6A-10.042, F.A.C.

Based on such allegations, the School Board charged that Respondent was guilty of misconduct in office, immorality, and (in the event she is convicted of pending criminal charges related to the incident in question) conviction of a crime involving moral turpitude.

At hearing, the School Board called Jorge Sotolongo, Natalie Roca, Linda Galati, Vicki Weintraub, Jo Janke, Mana Oken, Robert Asencio, Thomasina O'Donnell, and Sharon Jackson as witnesses, and the School Board's (Petitioner's) Exhibits numbered 1-3 and

5-17 were received in evidence. 1/ Petitioner testified on her own behalf and called Edward Goldman and Tania Poveda as witnesses. Respondent's Exhibits numbered 1-7 were received in evidence.

The Transcript of the hearing was filed December 1, 1999, and the parties were accorded ten days from that date to file proposed recommended orders. The parties elected to file such proposals and they have been duly-considered.

FINDINGS OF FACT

1. Petitioner, School Board of Miami-Dade County (School Board), is a duly-constituted school board charged with the duty to operate, control and supervise all free public schools within the School District of Miami-Dade County, Florida.

2. Respondent, Margaret B. Mitchell, was at all times material hereto, employed by the School Board as a teacher (under a continuing contract of employment), and assigned to Barbara Goleman Senior High School (BGSHS) where she taught mathematics.

2/

3. Pertinent to this case, each student in Florida must earn a passing score on each part of the High School Competency Test (HSCT), reading (communications) and mathematics, or be exempted from each part in order to qualify for a regular high school diploma. Section 229.57(3)(c)5, Florida Statutes.

4. Given the nature of the test, it is maintained and administered in a secure manner such that the integrity of the

test will be preserved. Pertinent to the preservation of test security, the Department of Education has adopted Rule 6A-10.042, Florida Administrative Code, which provides:

(1) Tests implemented in accordance with the requirements of Section [] . . . 229.57 . . . Florida Statutes, shall be maintained and administered in a secure manner such that the integrity of the tests will be preserved.

* * *

(b) Tests or individual test questions shall not be revealed, copied, or otherwise reproduced by persons who are involved in the administration, proctoring, or scoring of any test.

* * *

(f) Persons who are involved in administering or proctoring the tests or persons who teach or otherwise prepare examinees for the tests shall not participate in, direct, aid, counsel, assist in, or encourage any activity which could result in the inaccurate measurement or reporting of the examinees' achievement. . . .

The legislature has also addressed the issue of test security through the enactment of Section 228.301, Florida Statutes, which provides:

(1) It is unlawful for anyone knowingly and willfully to violate test security rules adopted by the State Board of Education or the Commissioner of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by school districts pursuant to s. 229.57, or, with respect to any such test, knowingly and willfully to:

(a) Given examinees access to test questions prior to testing;

(b) Copy, reproduce, or use in any manner inconsistent with test security rules all or any portion of a secure test booklet; [or]

* * *

(g) Participate in, direct, aid, counsel, assist in, or encourage any of the acts prohibited in this section.

Any person who violates the provisions of Section 228.301, Florida Statutes, is guilty of a misdemeanor of the first degree, punishable by a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both. Section 228.301(2), Florida Statutes.

5. In October 1997, the HSCT was scheduled to be administered at BGSHS, with the reading (communications) portion scheduled for Saturday, October 4, 1997, and the mathematics portion scheduled for October 18, 1997. Respondent was one of a number of teachers selected to proctor both portions of the examination. As such, it was her responsibility to distribute the testing materials, collect the materials after testing, and maintain test security.

6. On October 4, 1997, Respondent proctored a class for the communications portion of the HSCT, and distributed and collected the test materials. Those materials (the HSCT booklet) are triple sealed: the outer seal secures the whole booklet, while the enclosed communications portion and mathematics portion of the examination are separately sealed. On receipt of the booklet, students should only have broken the outer seal for the

whole booklet and the seal on the communications portion (and not the mathematics portion) of the examination; however, one of Respondent's students accidentally broke the seal for the mathematics portion. Respondent, while responsible for test security (including inventorying all examinations and reporting broken seals), failed to report such breach.

7. During the late afternoon of October 7, 1997, Respondent sent an e-mail message to four fellow mathematics teachers, Carolyn Guthrie, Jo Janke, Linda Galati, and Vicki Weintraub, advising them that they would find a "blue present" in their school mail box. The e-mail was accessed the morning of October 8, 1997, and the "blue present" Respondent referred to, a blue computer disc, was located in each mail box.

8. Later that morning, Ms. Guthrie put the disc in her computer to see what it contained and discovered a file labeled "HSCT '97" which, when opened, contained a series of math questions. According to Ms. Guthrie, she immediately closed the file, returned the disc to Respondent, and told her "I didn't want it." Later, on reflection, Ms. Guthrie reasoned her response (given her suspicion that the disc contained the mathematical portion of the 1997 HSCT) was inadequate. Consequently, she spoke with the other teachers (Ms. Janke, Ms. Galati, and Ms. Weintraub) and took possession of their discs. Ms. Guthrie delivered these discs, as well as her

suspicious regarding the information contained on the discs, to Jorge Sotolongo, principal of BGSHS.

9. Subsequent investigation confirmed that the information (math questions) contained on the blue discs had been derived from the 1997 HSCT, and that the examination had been compromised. 3/ Consequently, the second portion of the HSCT (the mathematics section) scheduled for October 18, 1997, was cancelled. 4/ Ultimately, based on its perception that Respondent intentionally breached test security, the School Board suspended Respondent from her employment and commenced these proceedings to dismiss her.

10. In resolving the pending charge, it cannot be seriously disputed that the information Respondent provided her fellow teachers on the blue discs was derived from the mathematics portion of the 1997 HSCT, and that the mathematics portions of the test was compromised. What remains to resolve is whether, as contended by the School Board, the proof demonstrates (more likely than not) that Respondent knowingly and willfully reproduced or revealed the test. Also to resolve (or, stated otherwise, inherent to the resolution of the pending charge) is whether Respondent's explanation regarding the source for the information she copied onto the blue discs, as well as her perception of its content, is worthy of belief. In this regard, Respondent avers that on the afternoon of October 7, 1997, she received a "black disc," anonymously, in her teacher's mail box

at BGSHS; that she briefly opened the disc and scanned (without studying) its contents; concluded the disc contained "practice questions" for the HSCT; and copied the material on to the blue discs for her fellow teachers.

11. Giving due regard to the proof, as well as her education, training, and experience, it must be resolved that Respondent's explanation regarding the source of the information she copied onto the blue discs, as well as her perception of its content, is inherently improbable and otherwise unworthy of belief. Rather, the proof points unfalteringly to the conclusion that Respondent knowingly and willfully reproduced and provided copies of the mathematics portion of the 1997 HSCT to her fellow teachers. 5/

12. Based on the foregoing incident, Respondent was arrested and charged in the County Court, Dade County, Florida, Case No. M98-56462, with a breach of test security (Section 228.301, Florida Statutes). Respondent entered a plea of not guilty; however, on June 28, 1999, after hearing, she was found and adjudicated guilty of the offense. As a consequence, Respondent was ordered to pay a fine of \$1,000; to pay costs of \$311; sentenced to 90 days house arrest; and ordered to serve a period of 6 months probation.

13. Respondent's conduct (of compromising test security) is inconsistent with her obligation to exercise the best professional judgment and integrity; to maintain the respect and

confidence of one's colleagues, of students, and of parents; to achieve and sustain the highest degree of ethical conduct; and to maintain honesty in all professional dealings. In sum, through her conduct, Respondent has evidenced that she is untrustworthy, unreliable and lacking in good moral character, such that her effectiveness in the school system has been seriously impaired.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. Sections 120.569 and 120.57(1), Florida Statutes.

15. Pertinent to this case, Section 231.36(4)(c), Florida Statutes, provides:

Any member of the . . . instruction staff [such as Respondent] . . . who is under continuing contract may be suspended or dismissed at anytime during the school year; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude, as those terms are defined by rule of the State Board of Education. . . .

Here, Petitioner charges that Respondent is guilty of immorality, misconduct in office, and conviction of a crime involving moral turpitude.

16. Rule 6B-4.009, Florida Administrative Code, defines "immorality," "misconduct in office," and "moral turpitude" as follows:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, FAC., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

* * *

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

17. Pertinent to the charge of "misconduct in office," Rule 6B-1.001, Florida Administrative Code, the Code of Ethics of the Education Profession in Florida, provides:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

Also pertinent to the charge of "misconduct in office," Rule 6B-1.006, Florida Administrative Code, Principles of Professional Conduct for the Education Profession in Florida, provides:

(5) Obligation to the profession of education requires that the individual:
(a) Shall maintain honesty in all professional dealings.

18. Here, it should not be subject to debate that Respondent's act of knowingly and willfully reproducing the mathematics portion of the 1997 HSCT and providing copies of that test to her fellow teachers constituted an act of immorality and misconduct in office; that such conduct was sufficiently notorious to bring Respondent into public disgrace or disrespect and impair her service in the community; and that such conduct was so serious as to impair her effectiveness in the school system.⁶ It should also not be subject to debate that, upon conviction of the crime for breach of test security, Respondent, as an educator, was also shown to have been convicted of a crime involving moral turpitude. Consequently, Respondent has been shown to have violated the provisions of Section 231.36(4)(c), Florida Statutes, as alleged in the Notice of Specific Charges.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered which sustains Respondent's suspension without pay, and which dismisses her from employment with the School Board of Miami-Dade County, Florida.

DONE AND ENTERED this 28th day of December, 1999, in Tallahassee, Leon County, Florida.

WILLIAM J. KENDRICK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of December, 1999.

ENDNOTES

1/ Petitioner's Exhibit 4 was withdrawn and returned to Petitioner.

2/ Respondent is certified to teach high school mathematics and computer science. She has been employed by the School Board for approximately twenty years, and was employed at BGSHS from approximately 1994 until her suspension in February 1999.

3/ The math questions on the blue discs contained minor changes in the written narrative of the problem, such as the person's name; however, the same math skills were assessed, the same calculations were required, and the same answer options were offered. In sum, it cannot be subject to serious debate that the source for the information contained on the blue discs was the 1997 HSCT.

4/ The test was later rescheduled after the State, at additional expense, was able to obtain an alternate mathematics portion for testing. The cost to the School Board, State of Florida, staff, and students is detailed in Petitioner's Exhibits numbered 6 and 12.

5/ There is no direct evidence of record as to how Respondent obtained the mathematics portion of the 1997 HSCT; however, she clearly had time and opportunity on October 4, 1997, when she proctored the communication portion of the exam. At the time, proctors were required to report at 7:00 a.m. and to all logout at 12:00 (noon). Respondent's assigned students completed the test between 10:45 and 11:00 a.m., and copy machines were available for teacher use on the day of the examination. While it cannot be resolved with any degree of certainty, whether Respondent copied a test by machine or surreptitiously by hand (from the test booklet on which the seal had been broken or by bowing open a booklet without breaking the seal), it may be resolved that she did secure a copy of the test, knowingly and willfully reproduced it, and that her explanation regarding the source of the information (the mysterious "black disc") and her lack of knowledge regarding the information she placed on the blue discs is unworthy of belief.

6/ Here, there was direct proof that Respondent's conduct adversely affected her effectiveness in the school system. Moreover, such conclusion could also be reasonably drawn in the absence of specific evidence of impairment of the teacher's effectiveness as an employee where, as here, the personal conduct in which the teacher engaged was of such nature that it must have impaired the teacher's effectiveness. Summers v. School Board of Marion County, 666 So. 2d 175 (Fla. 5th DCA 1995); but see McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.