

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOM GALLAGHER, AS COMMISSIONER)
OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 00-2765PL
)
MARGARET ANN MITCHELL,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on November 30, 2000, in Miami, Florida, before Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lisa N. Pearson, Esquire
United Teachers of Dade
2929 Southwest Third Avenue
Coral Way
Miami, Florida 33129

For Respondent: Charles T. Whitelock, Esquire
Whitelock & Associates, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316

STATEMENT OF THE ISSUES

At issue in this proceeding is whether Respondent committed the offenses set forth in the Administrative Complaint dated

April 4, 2000, and, if so, what disciplinary action should be taken against her.

PRELIMINARY STATEMENT

On April 4, 2000, Petitioner, Tom Gallagher, as Commissioner of Education (the Commissioner) filed an Administrative Complaint against Margaret Ann Mitchell (Mitchell) seeking to revoke her Florida teaching certificate.

Mitchell filed a timely request for a hearing to challenge the proposed discipline, and the matter was referred to the Division of Administrative Hearings (DOAH) for the assignment of an administrative law judge to conduct a formal hearing.

The Administrative Complaint charged that on or about October 4, 1997, Respondent, while serving as an examination proctor, unlawfully copied the mathematics portion of the 1997-1998 High School Competency Test (HSCT), and distributed it to several other teachers before the test was administered.

The allegations against Mitchell in connection with the HSCT spawned three separate legal proceedings, of which this is the last.

In June 1999, Mitchell was convicted by a Miami-Dade County jury on charges of violating Section 228.301, Florida Statutes, relating to test security.

Additionally, the Miami Dade County School Board sought to terminate Mitchell's employment as a teacher. The termination

was sustained in Miami Dade County School Board v. Margaret B. (sic) Mitchell, DOAH Case No. 99-0753. The Recommended Order was issued December 28, 1999. In due course a Final Order affirming same in toto was issued by the School Board and filed with DOAH on February 15, 2000.

In this action, the Commissioner seeks to revoke Mitchell's Florida teaching certificate.

The Commissioner alleged that the events giving rise to Mitchell's criminal conviction and employment termination constitute five separate statutory violations and one rule violation, as follows:

Count 1: The allegations of misconduct set forth herein are in violation of Section 231.28(1)(c), Florida Statutes, in that Respondent has been guilty of gross immorality or an act involving moral turpitude.

Count 2: The allegations of misconduct set forth herein are in violation of Section 231.28(1)(e), Florida Statutes, in that Respondent has been convicted of a misdemeanor, felony, or other criminal charge, other than a minor traffic violation.

Count 3: The allegations of misconduct set forth herein are in violation of Section 231.28(1)(f), Florida Statutes, in that Respondent, upon investigation, has been found guilty of personal conduct which seriously reduces her effectiveness as an employee of the school board.

Count 4: The allegations of misconduct set forth herein are in violation of Section 231.28(1)(i), Florida Statutes, in that Respondent has violated the Principles of Professional Conduct for the Education

Profession in Florida prescribed by State Board of Education.

Count 5: Section 231.28(2), Florida Statutes, provides that the plea of guilty in any court or a decision of guilty by any court is prima facie proof of grounds for the revocation of the certificate.

Count 6: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(5)(a), Florida Administrative Code, in that Respondent has failed to maintain honesty in all professional dealings.

At final hearing, Petitioner offered Exhibits 1, 2, and 4, which were accepted into evidence. Respondent testified in her own behalf, and presented the testimony of Mana Oken, the test administrator for the HSCT at issue in these proceedings.

The one-volume Transcript of the hearing was filed January 8, 2001, and the parties requested and were granted leave to file proposed recommended orders by January 22, 2001. The proposed recommended orders were timely filed and have been carefully considered in the preparation of this recommended order.

FINDINGS OF FACT

1. At all times material hereto, the Commissioner is responsible for providing public, primary, secondary, and adult education teaching certificates in the State of Florida.

2. At all times material hereto, Mitchell was employed by the Miami-Dade County School Board and was a teaching instructor assigned to Barbara Goleman Senior High School (BGSHS).

3. At all times material to this case, an examination known as the High School Competency Test (HSCT) was required for students to qualify for a regular high school diploma pursuant to Section 229.57(3)(c), Florida Statutes.

4. The HSCT is a secured test within the meaning of Section 228.301, Florida Statutes. That section provides, in pertinent part, that it is unlawful for anyone to knowingly and willfully violate test security rules adopted by the State's Board of Education for mandatory tests administered by school districts pursuant to Section 229.57, Florida Statutes. It is also unlawful to copy, reproduce, or use any portion of any secured test booklet in any manner inconsistent with test security rules. Id.

5. A violation of Section 228.301, Florida Statutes, is 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.

6. The Department of Education has adopted Rule 6A-10.042, Florida Administrative Code, which requires, inter alia, that tests implemented in accordance with the requirements of Section 229.57, Florida Statutes, be maintained and administered in a secure manner such that the integrity of the test shall be preserved and that 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.

7. On Saturday, October 4, 1997, Mitchell was one of the teachers proctoring the HSCT at BGSHS. On that date, while the communications portion of the HSCT was being administered, Mitchell unlawfully gained access to the mathematics portion of the examination, which was to have been administered at a later date.

8. Shortly thereafter, and before the mathematics portion of the HSCT was to be administered, Mitchell sent an e-mail message to four out of approximately ten fellow BGSHS math teachers, advising them that they would find a "blue gift" in their respective school mail boxes. Each of these instructors, unlike those who did not receive a "blue gift," were friendly with Mitchell, and ate lunch with her on a regular basis.

9. Thereafter, Mitchell in fact provided a blue disk to each of the four teachers to whom the e-mail was directed. On each disk were many of the actual HSCT mathematics questions unlawfully obtained by Mitchell.

10. The first of the teachers to review the contents of the "blue gift" immediately suspected that Mitchell had engaged in a criminal violation of test security law, and reported her suspicions to BGSHS' principal. Following investigations by appropriate authorities and the panoply of due process

protections appropriate to each forum, Mitchell was convicted on the misdemeanor charge of having knowingly and willfully breached the security of the HSCT, and her employment as a Miami-Dade County school teacher was terminated.

11. The criminal case, State of Florida v. Margaret Mitchell, Case Number 04586-W, was tried to a jury before Honorable Caryn Canner Schwartz in the County Court in and for Miami-Dade County, Florida, in June 1999.

12. On June 28, 1999, following a week-long trial, the jury returned a verdict of guilty against Mitchell for her violation of Section 228.301, Florida Statutes.

13. Mitchell does not dispute that the foregoing criminal and administrative proceedings were conducted, and that the charges against her in each case were sustained.

14. Mitchell did not seek appellate relief with respect to either proceeding.

15. Mitchell maintains here, as in both of the previous proceedings, that she did not intend to violate test security procedures. She claims that she innocently copied and distributed what she thought was an authorized practice test.

16. Mitchell did not offer her innocent mistake defense to anyone until two months after her crime was revealed. Mitchell's claims of innocence are inconsistent with her conduct and demeanor when she was first confronted with the allegations

against her, as well as the known facts and circumstances surrounding the HSCT security breach.

17. In addition, Mitchell's testimony at final hearing in this proceeding with respect to her innocent mistake defense is unworthy of belief. Mitchell's demeanor while testifying was deceptive, and her testimony was inconsistent with the known facts and circumstances surrounding the HSCT security breach.

18. At Mitchell's criminal sentencing, Judge Schwartz noted that the jury's guilty verdict was supported by evidence which was "overwhelming" and assessed a fine of \$1,000, court costs, and ordered Mitchell to serve 90 days house arrest and six months probation.

19. On February 10, 1999, the Miami-Dade County School Board initiated dismissal proceedings against Mitchell and, on December 28, 1999, Administrative Law Judge William J. Kendrick sustained the dismissal. In his Recommended Order, Judge Kendrick concluded, in pertinent part:

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. 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.

(P.4 at 10-11.)

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57, Florida Statutes.

21. The Commissioner and the State of Florida Education Practices Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to Section 231.262 and 231.28, Florida Statutes, and Rule 6B-1.006, Florida Administrative Code, Principles of Professional Conduct for the Education Professional in Florida.

22. The State of Florida Education Practices Commission has authority to seek sanctions against Respondent as set forth in Sections 231.262 and 231.28, Florida Statutes.

23. Petitioner in this matter seeks disciplinary sanctions against Respondent's teaching certificate pursuant to Section 231.262(6) and 231.28, Florida Statutes, and Rule 6B-1.006, Florida Administrative Code, Principles of Professional Conduct for the Education Professional in Florida, for the statutory and

rule violations as set forth in Petitioner's Administrative Complaint.

24. Petitioner bears the burden of proof in this proceeding by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1997).

25. The truth of the allegations of Count II of the Administrative Complaint has been conclusively established in that Mitchell stands convicted of a misdemeanor, or other criminal charge, other than a minor traffic violation, in violation of Section 231.28(1)(e), Florida Statutes.

26. The truth of the allegations of Count V of the Administrative Complaint has also been conclusively established in that Mitchell was subject to a decision of guilty by a Court, which decision constitutes prima facie proof of grounds for the revocation of the Respondent's certificate in accordance with Section 231.28(2), Florida Statutes.

27. Mitchell does not dispute the fact of her criminal conviction. Instead she argues that the undersigned, upon review of the transcripts of the criminal proceeding, should conclude that the criminal conviction was unwarranted and should be rejected in these proceedings.

28. There is no authority for the proposition that the undersigned may second guess the jury's judgment. However, having accepted Mitchell's invitation to revisit the facts and

circumstances as demonstrated in the criminal and administrative proceeding transcripts, the undersigned concurs that the evidence in each of those proceedings supported, by at least clear and convincing evidence, a finding that Mitchell was guilty of knowingly and willfully violating the security of the 1997 HSCT.

29. Mitchell's violation of Section 231.28(2), Florida Statutes, is, standing alone, more than sufficient in and of itself to support the revocation of Mitchell's teaching certificate.

30. In the context of these proceedings, Counts I, III, IV, and VI are subsumed within the undisputed and dispositive fact of Mitchell's criminal conviction.

31. Based upon the undisputed evidence supporting the allegations of Counts II and V, it is entirely appropriate to impose the ultimate sanction pursuant to the authority provided in Sections 231.262(6) and 231.28(1), Florida Statutes, the revocation of Mitchell's teaching certificate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered revoking the teaching certificate of the Respondent.

DONE AND ENTERED this 5th day of March, 2001, in
Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2001.

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.