

7-14-04

STATE OF FLORIDA
DEPARTMENT OF EDUCATION

FILED AGENCY CLERK

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SHAGUFA MUBARIK,

Petitioner,

AP

DEPT OF EDUCATION
TALLAHASSEE FLA

v.

DOE Case Number 2004-1013-FOF

DOAH Case Number 04-0696

DEPARTMENT OF EDUCATION,

Respondent.

WFQ - closed

DEPARTMENT OF
ADMINISTRATIVE
HEARINGS

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FINAL ORDER

By letter dated February 16, 2004, the Department of Education (Department or Respondent) notified Shagufa Mubarik (Petitioner) that her score from the January 24, 2004, administration of the Professional Education Test had been invalidated. The letter stated the reason for the invalidation was the Department's determination that Petitioner cheated on the test. The letter advised Petitioner of her right to dispute this determination through an administrative hearing.

By letter dated February 20, 2004, Petitioner disputed the Department's determination and requested a hearing. The Department forwarded the request for hearing to the Division of Administrative Hearings, which scheduled and conducted the proceeding on May 3, 2004. On July 14, 2004, the Administrative Law Judge issued a Recommended Order based on the parties' proposed recommended orders and the record of the proceeding.

After review of the entire record of this case and applicable law, the Department hereby enters this Final Order as required by Section 120.569(2)(1) and 120.57(1), Florida Statutes.

Findings of Fact

The Administrative Law Judge's Findings of Fact, paragraphs 1 - 19 of the Recommended Order, are hereby adopted as the Findings of Fact of this Final Order and are incorporated as if fully set forth herein.

Conclusions of Law

The Administrative Law Judge's Conclusions of Law, paragraphs 20 and 22 - 26 of the Recommended Order, are hereby adopted as the Conclusions of Law of this Final Order and are incorporated as if fully set forth herein.

The Department excepts paragraph 22 of the Conclusions of Law. The Department agrees with the Administrative Law Judge's determination in paragraph 22 that the Department proved its case by clear and convincing evidence. However, the correct burden of proof in this proceeding is preponderance of the evidence, a lower burden of proof than clear and convincing evidence. Section 120.57(1)(j), Florida Statutes provides: "Findings of Fact shall be based on a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record on matters officially recognized." (Emphasis supplied.)

This proceeding did not involve penal or licensure disciplinary action, nor is there another statute requiring a higher burden of proof. This case merely involved a determination by the Department affecting Petitioner's substantial interest as to whether her test score would be invalidated based on alleged cheating. Therefore, the correct standard for the burden of proof in

this proceeding is preponderance of the evidence and paragraph 22 of the Conclusions of Law is excepted accordingly.

Disposition


Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED and ADJUDGED that:

Petitioner failed to follow testing procedures as instructed for the Professional Education Test administered January 24, 2004. Petitioner's actions violated Department policies on cheating. Therefore, Petitioner's responses to the Professional Education Test taken January 24, 2004, are void and her test shall not be scored.

This Final Order becomes effective upon filing with the Agency Clerk of the Department of Education, subject to the Notice of Rights attached hereto and incorporated herein by reference.

DONE AND ORDERED this 23rd day of August, 2004,

Tallahassee, Leon County, Florida.



JIM HORNE
Commissioner of Education
State of Florida

COPIES FURNISHED TO:

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Clerk
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Tallahassee, Florida 32399

The Honorable William F. Quattlebaum
Administrative Law Judge
Division of Administrative Hearings
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Florida Administrative Law Reports

NOTICE OF RIGHTS

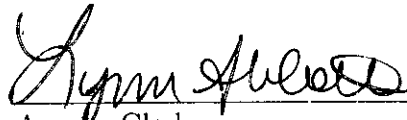
Pursuant to Section 120.68(2), Florida Statutes, and Florida Rule of Appellate Procedure 9.110(b) and (c), Petitioner is advised that within 30 days of the date of this Final Order she may seek judicial review of this Final Order by filing a Notice of Appeal with the Agency Clerk, Florida Department of Education, Suite 1514 Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400, and by filing a second copy of such Notice of Appeal with the appropriate filing fee with the Clerk of the District Court of Appeal, First District, 300 Martin L. King, Jr., Boulevard, Tallahassee, Florida 32399-1850, or with the Clerk of the District Court wherein the Petitioner resides.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order in Shagufa Mubarik v. Department of Education, DOE Case Number 2004-1013-FOF, has been furnished by U.S. Mail to

Shagufa Mubarik, pro se
2426 Island Club Way
Orlando, Florida 32822

this 24 day of August, 2004.



Agency Clerk