

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD)
)
 Petitioner,)
)
vs.) Case No. 06-1075
)
CEDRIC MITCHELL,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held on October 23, 2006, by video teleconference with the parties appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jean Marie Middleton, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: Lawrence R. Metsch, Esquire
Metsch & Metsch P.A.
20801 Biscayne Boulevard, Suite 307
Aventura, Florida 33180-1423

STATEMENT OF THE ISSUES

The issue is whether the Respondent, Cedric Mitchell (Respondent), committed the violations alleged and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On or about March 15, 2006, the Petitioner, School Board of Miami-Dade County (Petitioner or School Board) took action to initiate disciplinary proceedings against the Respondent. The Petitioner alleged that the Respondent had violated School Board Rules 6Gx-13-4A1.21, 6Gx13-1.213, and Sections 1001.32, 1001.22, 1001.33, 447.209 Florida Statutes (2004). More specifically, the Notice of Charges in this matter alleged that the Respondent had utilized credit for which he did no academic work to achieve credentials that supported his employment with the School Board.

At the hearing, the Petitioner presented the deposition testimony of the Respondent, and the following witnesses: Michael Alexander, a detective employed by the School Board; and Lucy Iturrey, a director in the Petitioner's Office of Professional Standards. The Petitioner's Exhibits 1-9, 11-13, 15, and 20-22 were admitted into evidence. The Respondent presented testimony from Michael Molnar, a union representative for the United Teachers of Dade. The Respondent's Exhibits 1-3 were also received in evidence.

The transcript of the proceedings was filed with the Division of Administrative Hearings on January 9, 2007. The parties timely filed Proposed Recommended Orders that have been fully considered in the preparation of this Order.

FINDINGS OF FACT

1. The Petitioner is a duly constituted entity charged with the responsibility and authority to operate, control, and supervise the public schools within the Miami-Dade County Public School District. As such, it has the authority to regulate all personnel matters for the school district. See § 1001.32, Fla. Stat. (2006).

2. At all times material to the allegations of this case, the Respondent, Cedric Mitchell, was an employee of the School Board and was subject to the disciplinary rules and regulations pertinent to employees of the School District.

3. On or about July 20, 2005, the Petitioner's Office of the Inspector General issued a memorandum to Dr. Rudolph F. Crew, the Superintendent of Schools, that referenced 106 teachers who were identified by a grand jury investigation of teachers who obtained academic credits from Eastern Oklahoma State College. The Respondent was one of the teachers.

4. Thereafter, a lead sheet was generated to direct the Miami-Dade County Schools Police Department to conduct an investigation of the allegations. The claim asserted that the Respondent had obtained academic credits for the purpose of certification, recertification and/or endorsements without availing himself of actual academic class time, work, or effort.

5. Michael Alexander, a detective with the Miami-Dade Schools' Police Department, was assigned to the matter.

Detective Alexander interviewed the Respondent on or about November 29, 2005. At that time the Respondent waived his right to representation and freely admitted to the detective that he obtained course credit from Eastern Oklahoma State College but attended no classes and did no coursework.

6. According to the detective, the Respondent described a scenario whereby the Respondent went to Palmetto High School on a Saturday and spoke with a "Dr. McCoggle" who advised him as to the coursework needed for certification and charged him \$775.00. After making the payment to Dr. McCoggle, the Respondent did nothing of an academic nature to complete coursework.

7. Sometime later a transcript denoting the appropriate coursework came to the Respondent's home.

8. Despite having performed no academic work to achieve the credits, when he received the transcripts for the courses, the Respondent submitted them to the Petitioner to achieve certification. Had he not submitted documentation of the courses needed for certification, the Respondent would have been terminated from his employment with the School District.

9. There is no evidence in this record that the Respondent actually ever legitimately completed the academic course work necessary for certification. Even after the Respondent knew or should have known that the procedure he used to achieve certification was unacceptable, there is no evidence that the Respondent ever completed academic course work to support the

Respondent's certification to teach for the Miami-Dade Public Schools.

10. Once the Respondent became aware that he was under investigation for participating in the inappropriate scheme to obtain college credit, he joined the teachers' union and sought the union representative's advice regarding the matter.

11. According to the union representative, Michael Molnar, the Respondent did not indicate to him that he had done no course work or attended no classes. Had the Respondent been candid in that matter, Mr. Molnar would have advised the Respondent not to implicate himself or to resign before implicating himself. Because that was not the case, the union representative told the Respondent to be truthful and honest in answering the questions posed by the Petitioner. To that end, the Respondent confirmed the information regarding his credits from Eastern Oklahoma State College when questioned by the Petitioner.

12. The Respondent did not contest the findings reached in Detective Alexander's report of the investigation.

13. The Respondent did not contest the findings asserted in the Summary of Conference-For-The-Record prepared by Lucy Iturrey.

14. The Respondent was not coerced or otherwise forced to admit that he accepted college credit from Eastern Oklahoma State College and submitted that credit for certification purposes. Had the Respondent been candid with the union representative and

been advised that he could refrain from making a statement to the Petitioner (and obviously did not admit the facts of the scheme), the underlying facts regarding the scheme (to give academic credits where no credits were earned) could have been ascertained through other means. The widespread use of the scheme was well-documented and led to the successful criminal prosecution of its "kingpin."

15. The School Board of Miami-Dade County took action at its meeting on March 15, 2006, to suspend and initiate dismissal proceedings against the Respondent. That preliminary action acknowledged that the outcome of the matter was subject to an administrative hearing if requested by the employee.

16. The Respondent timely requested an administrative hearing to contest the proposed action and the case was timely forwarded to the Division of Administrative hearings for formal proceedings.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2006).

18. The Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that the Respondent committed the violations alleged. See McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

19. Pursuant to Section 1012.33, Florida Statutes (2005),

the Petitioner has the authority to dismiss professional service contract teachers for "just cause."

20. "Just cause" as that term is defined includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or the conviction of a crime involving moral turpitude. See Dietz v. Lee County County School Board, 647 So. 2d 217 (Fla. 2nd DCA 1994).

21. Florida Administrative Code Rule 6B-4.009 defines "misconduct in office" 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.

22. At all times material to this matter, the Principles of Professional Conduct for teachers required the Respondent to not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression, to maintain honesty in all professional dealings, not to misrepresent his own professional qualifications, and not to submit fraudulent information on any documents in connection with professional activities. See Fla. Admin. Code R. 6B-1006.

23. "Misconduct in office" may be established where the conduct engaged in by the teacher is of such a nature that it "speaks for itself" in terms of its seriousness and its adverse impact on the teacher's effectiveness. In some cases, the proof

of the underlying conduct itself constitutes proof of impaired effectiveness. See Purvis v. Marion County School Board, 766 So. 2d 492 (Fla. 5th DCA 2000).

24. In this case the Respondent did not complete any academic work to achieve the credits he submitted for certification. The Respondent freely admitted this to the detective. And, although the Respondent bears no burden of proof in this matter, he did not provide any credible explanation for his behavior when given the opportunity to do so. Had the Respondent provided any reasonable explanation in this matter, his conduct might have been excusable or understandable. As it is, the Respondent submitted documents to achieve certification when he knew he had done no real academic work for the credits.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Miami-Dade County enter a Final Order terminating the Respondent's employment contract. Whether or not the Respondent could be eligible for re-employment with the Petitioner should be based upon whether the Respondent ever achieves the academic status for certification based upon academic performance and coursework completed through a legitimate means.

DONE AND ENTERED this 15th day of February, 2007, in
Tallahassee, Leon County, Florida.

S

J. D. Parrish
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of February, 2007.

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.