

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 06-4144
)
 MICHELLE MURRAY,)
)
 Respondent.)
 _____)

SUMMARY RECOMMENDED ORDER

A motion for summary order in this case was heard, pursuant to notice, by telephone conference call on April 26, 2007, by Administrative Law Judge Eleanor M. Hunter of the Division of Administrative Hearings in Tallahassee, Florida.

APPEARANCES

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

For Respondent: Mark F. Kelly, Esquire
Kelly & McKee, P.A.
1718 East Seventh Avenue, Suite 301
Post Office Box 75638
Tampa, Florida 33675-0638

Gail L. Grossman, Esquire
Gail Grossman, P.A.
815 Ponce de Leon Boulevard, Suite 209
Coral Gables, Florida 33134

STATEMENT OF THE ISSUE

Whether Petitioner has demonstrated that Respondent's employment with Petitioner should be suspended or terminated.

PRELIMINARY STATEMENT

On October 23, 2006, counsel for Petitioner, Miami-Dade County Public Schools, forwarded to the Division of Administrative Hearings the request of Respondent, Michelle Murray, for a hearing to contest her October 11, 2006, termination from employment as a high school teacher. Administrative Law Judge Eleanor M. Hunter was assigned to the case and, at the request of the parties, scheduled a hearing for January 12, 2007.

After Respondent filed an Unopposed Motion for Continuance, the hearing was re-scheduled for February 15, 2007. Due to a conflict that arose in the schedule of the Administrative Law Judge, the hearing was postponed until February 27, 2007. Petitioner then filed an Unopposed Motion for Continuance and the case was re-scheduled for May 1, 2007.

On April 20, 2007, Respondent filed Respondent's Motion for Summary Order Relinquishing Jurisdiction with Findings of Fact, Conclusions of Law, and Recommended Order, which was followed, on April 25, 2007, by Petitioner's Response to Respondent's Motion for Summary Order Relinquishing Jurisdiction with

Findings of Fact, Conclusions of Law, and Recommended Disposition.

Petitioner's Response represented that it requested and agreed that Respondent's Motion should be granted, but the facts recited in the pleadings demonstrated a continuing potentially relevant factual dispute that prompted the Administrative Law Judge to conduct a telephone conference on April 26, 2007, before agreeing to cancel the hearing scheduled for May 1, 2007.

During the telephone conference, the parties agreed that Petitioner would file Petitioner's Amended Response to Respondent's Motion for Summary Order Relinquishing Jurisdiction with Findings of Fact, Conclusions of Law, and Recommended Disposition, as Petitioner did on April 30, 2007, to resolve the apparent factual dispute. The parties also agreed to file a proposed summary recommended order to reflect the agreement of the parties on the facts and law applicable in this case. Respondent's Proposed Recommended Order, with confirmation that all counsel agree to the entry of that Order, was filed on May 1, 2007.

FINDINGS OF FACT

Based on the representations, submissions, and agreement of the parties, the following Findings of Fact and Conclusions of Law are entered:

1. The relevant facts are essentially those set forth in the investigative report of Petitioner, Miami-Dade County School Board (Petitioner). (BS 154-156, and attached Exhibits).¹ According to the report, Respondent was referred to Dr. William McCoggle during the summer of 2002 by Mr. Tim Dawson, a principal employed by Petitioner. As of that time, Respondent needed two courses to meet certification requirements. She took one course at Miami-Dade College (which is not at issue here) and arranged to take the second course through Otterbein College with Dr. McCoggle, who was operating his business under the name of Moving on Toward Education and Training, or MOTET. (BS 147). She called Dr. McCoggle to schedule an appointment for registration. The meeting took place at his home. Dr. McCoggle gave her information about the program and informed her that the credits would be through Otterbein College. He gave her an enrollment packet and information regarding the fee. After the Respondent confirmed that Otterbein College was an accredited school, Respondent made a second appointment with Dr. McCoggle at his home, where she submitted the completed enrollment packet and paid the fee (between \$600 and \$800). Dr. McCoggle told her that the course was an internet-based/correspondence course and that a Dr. Cannon would be her instructor. The course would consist of writing essays, completing reports and taking examinations and that she would be contacted via the internet

with a complete outline of the assignments. After several weeks passed without any information coming to her, Respondent attempted to contact Dr. McCoggle approximately 15 times, leaving telephone messages. She never heard back from Dr. McCoggle. Several months later she received a letter from Otterbein stamped "Official Transcript," which reflected a grade of "B," and a date of August 8, 2002. (BS 85).

2. Respondent placed the Otterbein transcript in her files along with transcripts from other institutions. She later inadvertently submitted a copy of the Otterbein transcript, along with transcripts from other institutions, to the certification office operated by Petitioner for the purpose of renewing her certificate. It is undisputed that Respondent never performed any actual academic work in the course for which she received a transcript from Otterbein.

3. The only potential disputed fact issue regarding this matter concerns Respondent's intentions with respect to the Otterbein transcript, which she acknowledges receiving. Respondent acknowledges that a photocopy of the Otterbein transcript made its way into a collection of transcripts from other institutions and that the whole group of documents, including the photocopy of the Otterbein transcript, was given to Petitioner's certification office. Respondent contends, however, that the photocopy of the Otterbein transcript was

included with the others inadvertently and not for the purpose of obtaining credit. By the time the materials were presented, Respondent had more than enough credits for certification from other institutions without using the Otterbein course.

4. Respondent's view of the matter is supported by the questionnaire that she presented to Petitioner's investigators prior to the meeting which produced the investigative summary. At the time of the apparently inadvertent submission of the Otterbein transcript to Petitioner, Respondent was not employed by Petitioner. Her answers to the questionnaire, which were submitted to Respondent in advance of her interview with its investigators, show that Respondent was not teaching for Petitioner at the time she applied for the Otterbein course through MOTET. Respondent also stated that she delivered all of her credits from each institution to Petitioner but noted that she "had more than enough credits to obtain teacher certification without MOTET." (BS 218). Her questionnaire answers further establish that she took graduate courses at Florida International University, Miami-Dade Community College (MDCC), and St. Martins University that would replace or substitute credits obtained through MOTET. The investigative file in her case reflects that the transcripts were submitted prior to Respondent's subsequent reemployment with Petitioner

and before the present disciplinary proceeding was initiated against her.

5. Respondent's explanation is also entirely consistent with her certification file, which was made part of the investigative report before the disciplinary action against her was taken. Thus, a summary by Petitioner's certification office states that the "records indicate that an Otterbein transcript was submitted for certification purposes but [there is] no evidence that transcript was utilized for issuance of a certificate. (BS 168). (Emphasis added). Respondent's teaching certificate was not issued by the State of Florida, Department of Education (DOE) until April 21, 2004, almost two years after she applied for the Otterbein course through MOTET. There is no evidence that the MOTET course work was ever applied toward or used to obtain certification credit. (BS 170). Moreover, Petitioner's Certificate Conversation Log, prepared by Petitioner's agents, reflects an entry dated May 21, 2003, which relates to a telephone conversation with Respondent. The entry states "she had sent me a packet of material on Friday—Official MDCC Transcript, which I copied for file and sent orig. to DOE. Also sent a copy (not orig.) of Otterbein transcript. I informed her that she needs an official Otterbein transcript for DOE." (BS 174-175). There is nothing in the investigative file to indicate that Respondent ever followed up on this

conversation by submitting an original Otterbein transcript pursuant to the instructions from the Petitioner's certification agent. Nor is there any evidence in the file that the School Board's certification office ever transmitted any request to DOE that Respondent be given credit for the Otterbein course work.

6. The information in Petitioner's investigative file is further fleshed out by evidence adduced during discovery. Petitioner's witnesses, including its official in charge of certification, have acknowledged in depositions that there is no evidence that any certification or other credit was issued to Respondent based on the Otterbein transcript, that there is no evidence that Respondent ever delivered an original Otterbein transcript to the School Board in response to the suggestion of Petitioner's certification office, nor that she ever obtained credit of any kind based on the Otterbein transcript. Moreover, Petitioner's certification official, Charlene Burks, confirmed that it is the ordinary practice to transmit, by Petitioner's special overnight delivery service, any original transcripts immediately to the DOE certification officials (who have sole authority to issue certification credit). There is no evidence that any original Otterbein transcript or credits claimed thereunder, were transmitted from Petitioner to the DOE on behalf of Respondent, nor that any such documentation was

received by the DOE from any source, nor that any credits were issued to Respondent based on the Otterbein transcript.

7. Respondent's account of events is further supported by the official who conducted Petitioner's investigation of Respondent, Bloniva Julie Aristede. At her deposition, she produced her handwritten notes, taken during the investigation interview with Respondent, which state:

"Approx. 2 years later she subm. all transc. to cert. in order to recert. not realizing the Otterbein transc. was included."

Respondent still has the original Otterbein transcript that was mailed to her home.² Thus, the relevant evidence shows that the only Otterbein transcript Respondent ever gave to Petitioner was a photocopy. The evidence further shows that the Otterbein transcript was given inadvertently. The evidence further shows that the Otterbein transcript was not acceptable for issuance of academic credit, and that Petitioner told Respondent that the copy of the Otterbein transcript was not acceptable for issuance of academic credit. The Respondent took no further action to obtain credit through the Otterbein transcript, nor did she receive any credit. See also Paragraphs 2, 5, 6 of Petitioner's Response to Respondent's First Request for Admissions.

8. Finally, it is undisputed that Respondent was not employed by Petitioner when she enrolled in the Otterbein course, or when she inadvertently submitted the photocopy of the

transcript to Petitioner. The Otterbein transcript had no bearing on her eventual receipt of a teaching certificate and her subsequent reemployment by Petitioner.

9. Alternatively, to resolve any apparent disputed issue of fact concerning Respondent's reasons for delivering a photocopy of her Otterbein transcript to Petitioner's certification office, the parties agree that whether Respondent's action was deliberate or inadvertent is not material to the disposition of this case, as Petitioner's agents had clearly advised Respondent that she could obtain credit only by providing an original transcript. Respondent, therefore, knew that the photocopy of the Otterbein transcript, which she gave to Petitioner, whether deliberately or inadvertently, was useless for obtaining academic credit toward certification. When provided a clear opportunity to manifest her intent to deliver a fraudulent original transcript for certification purposes, Respondent took no action.

CONCLUSIONS OF LAW

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

11. Petitioner has the burden of proving the allegations in the Administrative Complaint by a preponderance of the evidence. See Allen v. School Board of Dade County, 571 So. 2d

568, 569 (Fla. 3d DCA 1990); and DiLeo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

12. Based on the undisputed facts, Petitioner cannot establish, by a preponderance of the evidence, that Respondent violated any of Petitioner's rules because (1) Respondent was not issued any certificate as a result of the submission of the Otterbein transcript; (2) Petitioner has no evidence that Respondent had any fraudulent intent to do so; and (3) Respondent was not an employee of the Petitioner during all of the relevant events.

13. The gravamen of this case is that Respondent fraudulently obtained an educator's certificate. See Fla. Admin. Code R. 6B-1.006(5)(h). The failure of proof that Respondent obtained or attempted to obtain a certificate based on the Otterbein transcript is sufficient in itself to establish the lack of just cause for discipline. Cf. Winn v. Popescu, 2006 WL 2460672, DOAH Case No. 06-1620PL (2006).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order dismissing the allegations against Respondent and reinstating her with back pay and all full benefits to which she is entitled.

DONE AND ENTERED this 9th day of May, 2007, in Tallahassee,
Leon County, Florida.

S

ELEANOR M. HUNTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of May, 2007.

ENDNOTES

^{1/} References are to the Bates Stamp page numbers for documents in Petitioner's investigative file as provided to Respondent, but not to the Administrative Law Judge.

^{2/} According to the parties, Respondent still has in her possession the original Otterbein transcript that was mailed to her home. Petitioner has a duplicate original in its files, but there is no evidence when or from whom it received the document.

COPIES FURNISHED:

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

Gail L. Grossman, Esquire
Gail Grossman, P.A.
815 Ponce de Leon Boulevard, Suite 209
Coral Gables, Florida 33134

Mark F. Kelly, Esquire
Kelly & McKee, P.A.
1718 East Seventh Avenue, Suite 301
Post Office Box 75638
Tampa, Florida 33675-0638

Dr. Rudolph G. Crew, Superintendent
School Board of Miami-Dade County
1450 Northeast Second Avenue, Suite 912
Miami, Florida 33132-1308

Jeanine Blomberg
Interim Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

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.