

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 08-0318
)
 DOUGLAS COOK, JR.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on March 26, 2008.

APPEARANCES

For Petitioner: Janeen Richard, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: James C. Casey, Esquire
Law Offices of Slesnick & Casey, LLP
2701 Ponce de Leon Boulevard, Suite 200
Coral Gables, Florida 33134

STATEMENT OF THE ISSUE

The issue is whether Respondent committed misconduct in office by applying for credential payment in reliance upon an online doctorate degree obtained without academic effort and thus violated Section 1012.33(6)(b), Florida Statutes, and Florida Administrative Code Rules 6B-4.009(3) and 6B-1.006(5).

PRELIMINARY STATEMENT

By letter dated December 20, 2007, Petitioner informed Respondent that it had suspended him for 30 days without pay from his position as assistant principal at Toussaint L'ouverture Elementary School. The letter informs him not to report to any work location from December 20, 2007, through February 13, 2008.

By Petition for Administrative Hearing filed January 3, 2008, Respondent requested a formal hearing.

By Notice of Specific Charges filed February 7, 2008, Petitioner alleged that, as an assistant principal, Respondent is administrative staff and, as provided by Section 1012.33(6)(b), Florida Statutes, may be suspended or dismissed during the term of his contract for immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. The Notice alleges that the submittal of an online degree, acquired without academic effort, to obtain credential payment is misconduct in office.

The Notice of Specific Charges states that, as a managerial exempt assistant principal, Respondent was entitled to a doctorate pay increment of \$2500 for the receipt of a doctorate degree in one of several approved areas of study. The Notice alleges that, on June 8, 2006, Respondent submitted to

Petitioner an application for doctorate pay increment and stated in the application that he had received a Ph.D. in education leadership from Northeastern University. The application allegedly was accompanied by transcripts from "Northwestern University, Ltd.," and "Northeastern University." The Notice alleges that Respondent in reality never earned a doctorate degree.

The Notice of Specific Charges alleges that Respondent thus is guilty of immorality, as defined by Florida Administrative Code Rule 6B-4.009(2), and misconduct in office, as defined by 6B-4.009(3).

At the hearing, Petitioner called five witnesses and offered into evidence 26 exhibits: Petitioner Exhibits 1-26. Respondent called five witnesses and offered into evidence four exhibits: Respondent Exhibits 1-4. The Administrative Law Judge introduced a copy of the school calendar as ALJ Exhibit 1. All exhibits were admitted except the handwriting on pages 30-31 of Petitioner Exhibit 11.

The court reporter filed the transcript on April 8, 2008. The parties filed proposed recommended orders on April 25, 2008.

FINDINGS OF FACT

1. Respondent is an assistant principal at Toussaint L'ouverture Elementary School in Miami. He graduated from the United States Naval Academy in Annapolis, Maryland, in 1978. While serving in the military in Pensacola, Respondent obtained a master's degree from Troy State University in 1985 by way of its extension program. Respondent is 54 years old.

2. In 1994, when first employed as a teacher in the Miami-Dade County public school system, Respondent was admitted to the doctoral program in education leadership at the University of Miami. He attended classes a couple of times per week per course and submitted tuition reimbursement vouchers to Respondent. Respondent left that program the following year without completing the requirements for a doctoral degree.

3. In 1996, Respondent reviewed brochures that he had received in the mail and decided to pursue his doctorate degree at Northwestern University, Ltd. He sent Northwestern International University, LLC, (NW) a check for about \$8000 to a post office box in Brussels, but did not seek reimbursement from Respondent. For some reason, Respondent also decided to obtain a doctorate degree from Northeastern University (NE) and sent them a check for about \$7000 to a post office box in New York, but again did not seek reimbursement. Respondent testified that he believed that he had already obtained the maximum

reimbursement available to him. Respondent engaged in academic activities with both institutions from 1996-2000, but the activities did not rise in scope or intensity to those associated with a legitimate doctoral program.

4. In 1998, Respondent applied for an assistant principal position, omitting any mention of his academic activities with NW and NE. He obtained the job.

5. In 2000, Respondent completed his academic activities with NW and NE. NW sent him a transcript showing the completion of 19 courses and the Ph.D. dissertation, with grades assigned to each. Only one typo undermines the credibility of the transcript itself: the second "i" is dropped from "Administration" in a human resources course, but the transcript omits dates for the courses. Respondent received very good grades with only one C and A+s in Education Program Evaluation and his dissertation.

6. Less care went into the preparation of the NE transcript, which also appears to culminate in the award of a Ph.D. "Curriculum" is spelled "Cirriculum," "Philosophy" is spelled "Philosphy," and "Evaluation" is spelled "Evaluaton." The NE envelope covering the transcript misspelled "transcript." Respondent received all As and Bs.

7. Shortly after obtaining his dual doctorates, Respondent submitted them to Petitioner. The credential payment program

for administrators went into effect in April 2006, so Respondent's motivation at the time that he submitted the transcripts was to obtain the prestige, and perhaps advancement, that went with the advanced degrees.

8. However, on June 8, 2006, Respondent submitted an application for the credential pay increment due to an administrator in possession of a relevant, legitimate doctorate degree. In the application, Respondent stated that he possessed a Ph.D. from NE, which he had obtained in 2000. He signed the application beside a statement, "I certify that all the foregoing information is true to the best of my knowledge."

9. Respondent claims that he submitted papers, including dissertations, in connection with both programs, but offered no detailed description of his academic activities. Instead, he seems to be "sticking to his story" that he thought he was completing coursework from legitimate educational institutions, even though it is indisputable that he did not.

10. At all material times, Respondent has known that NE and NW were diploma mills. He never explained why he spent the money and, presumably, time pursuing doctorate degrees at both institutions over the same timeframe. He is aware of the rigor of legitimate programs, having attended the Naval Academy, Troy State, and University of Miami. Respondent was undaunted by the sloppiness apparent in the transcripts. He claims now that,

"[i]f there is any fault, in this matter, it is one of trusting the advertisements that I saw, brochures I received and the syllabi, course work and transcripts I received from the [sic] non-accredited institution." However, it is inescapably apparent that there was fault, and the fault is that Respondent, with the intent to deceive Petitioner, submitted these transcripts and a fraudulent application for credential pay, to which Respondent knew he was not entitled.

11. There is no testimony explicitly to the effect that Respondent's fraudulent application for credential pay is so serious as to impair his effectiveness in the school system. However, this fact is inferred from the nature of a fraudulent application, to Respondent's professional employer, for credential pay based on fraudulently obtained academic credentials.

12. After a conference for the record, Petitioner proceeded to discipline Respondent for his misconduct. By letter dated December 10, 2007, Petitioner informed Respondent that the Superintendent would be recommending to the School Board suspension without pay for "30 workdays," effective at the close of the workday on December 19, 2007. The School Board subsequently approved this recommendation and, by letter dated December 20, 2007, the Assistant Superintendent informed Respondent that he was suspended for "30 workdays" without pay

and he was not to report to any work location from December 20, 2007, through February 13, 2008.

13. The penalty is not excessive. At the final hearing, Respondent elected not to admit to his misdealings with his employer, but instead produced exculpatory witnesses, one of whom testified that she had done some typing for him and one of whom testified that he had seen the damage done to Respondent's home by a hurricane and a lot of water damage to Respondent's belongings. Respondent has evidently not yet accepted responsibility for his misconduct.

14. Respondent rightly questions the accuracy of the Assistant Superintendent's calculation of the period of the suspension, which was to cover "30 workdays." Equating workdays with days for which Respondent was to be paid, Respondent claims that the suspension actually covers 40 workdays, not 30 workdays.

15. The Manual of Procedures of Managerial Exempt Personnel, dated April 18, 2006, states at Section B-3 that a 12-month employee works a 260-day work year. This means that he works 52 weeks times five days per week, for a total of 260 days. Respondent's suspension started December 20, so, in accordance with the determination of the School Board, the suspension should have ended at the close of the workday on January 30.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2007).

17. Section 1012.33(6)(b), Florida Statutes, provides:

Any member of the district administrative or supervisory staff, including any principal . . . , may be suspended or dismissed at any time during the term of the contract; 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 any crime involving moral turpitude, as these terms are defined by rule of the State Board of Education. . . .

18. Florida Administrative Code Rule 6B-4.009(3) defines "misconduct in office" as:

a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

19. Florida Administrative Code Rule 6B-1.006(5) provides that an administrator's "obligation to the profession of education requires that the individual":

a. Shall maintain honesty in all professional dealings.

* * *

- g. Shall not misrepresent one's own professional qualifications.
- h. Shall not submit fraudulent information on any document in connection with professional activities.

* * *

20. Petitioner must prove the material allegations by a preponderance of the evidence. McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

21. Petitioner has proved that Respondent is guilty of misconduct in office by failing to maintain honesty in all professional dealings, intentionally misrepresenting his professional qualifications, and submitting fraudulent information in connection with professional activities.

22. As noted above, there is no explicit testimony that this misconduct is so serious as to impair Respondent's effectiveness as an employee of Petitioner. But no such explicit testimony is required in a case of fraud upon a professional employer concerning academic qualifications. If the standard, as applied here, is an employee's intentional misrepresentation of a material fact to obtain compensation from a school board to which an employee is not entitled, this is necessarily so serious as to impair his effectiveness as a school board employee. See, e.g., Purvis v. Marion County School Board, 766 So. 2d 492, 498 (Fla. 5th DCA 2000) (inferred impairment for lying under oath at criminal trial and resisting

arrest); Walker v. Highlands County School Board, 752 So. 2d 127 (Fla. 2d DCA 2000) (inferred impairment for misconduct in classroom, as distinguished from private misconduct). Contra MacMillan v. Nassau County School Board, 629 So. 2d 226, 230 (Fla. 1st DCA 1993).

23. However, the Assistant Superintendent miscalculated the suspension that the School Board authorized, so Petitioner should credit Respondent with pay that he did not receive after January 30, which was when the authorized suspension should have ended.

RECOMMENDATION

It is

RECOMMENDED that Petitioner enter a final order finding Respondent guilty of misconduct in office for intentionally misrepresenting his academic qualifications in applying for credential pay for a doctorate degree and imposing a 30-workday suspension, as previously authorized by the School Board, but paying Respondent back pay for the period after January 30 through which the suspension was mistakenly implemented.

DONE AND ENTERED this 9th day of May, 2008, in Tallahassee,
Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of May, 2008.

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.