

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 EDC 8549

Dionne Pursley,

Petitioner,

v.

North Carolina Department of Public
Instruction,

Respondent.

FINAL DECISION

This matter came on to be heard before Administrative Law Judge Selina M. Brooks on February 1, 2013 in Raleigh, North Carolina.

APPEARANCES

For the Petitioner: David G. Schiller, Esq.
Schiller & Schiller
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Raleigh, NC 27612

For the Respondent: Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

ISSUE

Whether the State Board of Education erred in denying Petitioner's request for reinstatement of her teaching license.

WITNESSES

For Petitioner: Dionne Pursley

For Respondent: Joseph Milton Locklear
Katie Cornetto
Jonibel Willis

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibits 1, 2 and 4.

Respondent's Exhibits 3 and 5.

FINDINGS OF FACT

1. Petitioner holds a Bachelor's degree in Criminal Justice, a Master's degree in Public Administration, and a Master's degree in Business Administration. T. Pursley pp. 13-14.

2. Prior to teaching, Petitioner was employed as a juvenile probation officer in Georgia. T. Pursley pp. 14-15.

3. Petitioner was first employed as a substitute teacher in Georgia and then in North Carolina while she applied for various teaching jobs. T. Pursley p. 15.

4. On December 5, 2007, the Fayette County Magistrate Court in Georgia issued arrest warrants for the Petitioner on felony charges for one count of forgery in the first degree and three counts of identity fraud. R. Ex. 5.

5. In December 2007, Petitioner "turned [herself] in" to law enforcement for questioning on three separate occasions. The third time, she was arrested and posted bond so as not to have to stay in jail pending resolution of the criminal matter. T. Pursley p. 21.

6. In January, 2008, Petitioner went on-line to complete an application with Cumberland County Schools (CCS) in North Carolina. T. Pursley pp. 16, 36, 53-54 & 61.

7. On March 18, 2008, the Petitioner personally appeared in Fayette County Superior Court on the felony charges of forgery and identity fraud. The charge document set committal for April 15, 2008 and the bond posted by Petitioner secured her personal appearance for some undetermined date in the future. R. Ex. 5.

8. On April 22, 2008, Petitioner made modifications to her on-line application with CCS. T. Pursley pp. 53-54.

9. In June, 2008, Petitioner completed her on-line application with CCS and signed it. T. Pursley pp. 16 & 53-54.

10. Petitioner testified that when completing the on-line application, in response to the question, "[d]o you have any criminal charges pending?", she checked "no". T. Pursley pp. 38 & 54.

11. On direct examination, concerning her answers to this question, Petitioner testified: "And at the time, I didn't know if anything was coming or not, so, you know, nothing was coming, nothing was pending on me." T. Pursley p. 38. Then this exchange took place:

Q: All right. This question that's on page 6, question 5, were you ever asked that question – Do you have any criminal charges or procedures pending? Were you ever asked that question as part of the North Carolina Board of Education Licensing application process?

A: No, it doesn't ask you that.

T. Pursley p. 39, l. 14-20.

12. On cross-examination concerning this question, Petitioner testified that there were no criminal charges against her even though she posted bond on December 5, 2007 so that she would be released and could return to work. T. Pursley pp. 54-56 & 61-63.

13. In August of 2008, Petitioner was hired by Cumberland County Schools (CCS) to teach Criminal Justice at a high school even though she was not a licensed teacher because she has a Bachelor's degree in Criminal Justice. T. Pursley pp. 16-17 & 63.

14. On August 28, 2009, Petitioner applied for a Director of Safety position with CCS and during the background check for that position CCS received information that Petitioner had been arrested for financial identity fraud and forgery in 2007. P. Ex. 2, p. 9; T. Pursley pp. 88-91, 96-98 & 103-04.

15. On September 9, 2009, Petitioner was interviewed by the CCS Human Resources Office (HR) and she denied that the information was about her. P. Ex. 2, p. 9; T. Locklear p. 85.

16. Petitioner testified that before this meeting with HR, she did not know "that I was charged with something. They actually accused me of being charged of a crime." T. p. 27. It was "a couple of days later, I went through the mail and that's when I discovered that I was being officially charged." T. Pursley p. 28.

17. On September 11, 2009, HR interviewed Petitioner a second time. Petitioner admitted that the charges involved her but she thought that the charges had been "deposed of" and that she did not have to report them on employment applications. P. Ex 2 p. 9-10. She believed that the charges would not be on her record. T. Locklear pp. 87, 99-100 & 102.

18. Petitioner testified that at the time of these two meetings with HR that she had not received a court paper ordering her to appear and so she did not know that she was formally charged or that there was a pending criminal matter. T. Pursley pp. 64-66.

Q: When Personnel at Cumberland County [Schools] brought to your attention their understanding that there were some criminal matters that you were dealing with in Georgia, did you tell them that you did not have – you did not have a criminal situation that you were dealing with in Georgia?

A: Yeah, because I wasn't dealing with a criminal situation. Like I said, when everything happened in December that was it. There was nothing from the courts. There was nothing saying I needed to come and appear or show my face, no. There was nothing. They asked me --

T. Pursley p. 64, ll. 5-16.

19. On September 17, 2009, CCS received documentation from the District Attorney's office verifying that there were criminal charges pending against Petitioner. P. Ex. 2, p. 9.

20. On or about September 22, 2009, Petitioner pled guilty to one count of forgery in the first degree and three counts of financial identity fraud in the Superior Court of Fayette County, Georgia. Petitioner received a felony sentence of a ten-year confinement period, which sentence she is being permitted to serve on probation, pay fines and restitution. R. Ex. 5, pp. 19-21; T. Pursley pp. 24, 30-32, 73-74 & 76-79.

21. On September 24, 2009, a conference was held between Petitioner, the Superintendent and HR. Petitioner provided copies of the court documents entered on September 22, 2009 in Georgia. T. Locklear pp. 89-91. Petitioner's contradictory statements during interviews, on her applications and during this conference concerning the criminal charges concerned the Superintendent. T. Locklear pp. 92-95.

22. Before the Superintendent's decision was made on October 7, 2009, Petitioner resigned from her employment with CCS. T. Pursley pp. 41 & 52; T. Locklear pp. 91-92.

23. At the administrative hearing, Petitioner denied failing to report the conviction to CCS stating: "[w]hen I found out what happened, I was getting ready to report it, but by that time they had done let me go. They didn't even give me a chance to do it. They cornered me and put me in this room and want to interrogate me, asking me twenty questions, and then accused me of having different aliases." T. Pursley p. 42, l. 3-9.

24. After Petitioner resigned from employment with CCS, an attorney for CCS advised in-house counsel for the State Board of Education and the Department of Public Instruction that he was forwarding documents that may lead to license suspension or revocation. T. Cornetto p. 108.

25. On February 19, 2010, Petitioner appeared before the Superintendent of Public Instruction's Ethics Advisory Committee (Committee). The Committee is made up of professional educators appointed by Superintendent June Atkinson to review applications for a teaching license where the applicant has indicated he or she has a prior criminal conviction and/or has previously had a license revoked or suspended. The Committee voted for license revocation. T. Pursley pp. 67; T. Cornetto pp. 106-07 & 109-10.

26. On March 8, 2010, the Superintendent determined that based upon Petitioner's "concealment and misrepresentation concerning her pending criminal charges", there was reasonable cause to revoke Petitioner's license. P. Ex. 2, p. 9-10.

27. Petitioner timely filed a Petition For A Contested Case Hearing with the North Carolina Office Of Administrative Hearings which was subsequently dismissed for failure to prosecute on July 21, 2010 by the Honorable Donald W. Overby. T. Pursley pp. 69-70.

28. On August 8, 2011, Petitioner's license was revoked. T. Pursley p. 40-41 & 50.

29. Petitioner testified that the 2011 date on the Order of Revocation was wrong because she was removed from the classroom in 2009. P. Ex. 2, p. 9; T. Pursley p. 51.

30. In April, 2012, Petitioner applied for reinstatement of her North Carolina teaching license. T. Pursley pp. 70-71 & 79; T. Cornetto p. 112.

31. On her reinstatement application, Petitioner indicated that she had been convicted of a crime other than a minor traffic violation and that she previously had a license revoked or suspended by a state or governing body. T. Pursley p. 71; T. Cornetto p. 113.

32. On July 13, 2012, the Petitioner was interviewed by the Superintendent's Ethics Advisory Committee regarding her criminal background, and the events and circumstances resulting in the revocation of her North Carolina teaching license. P. Ex. 2, Interr. No. 8; T. Pursley p. 79; T. Cornetto p. 114.

33. After hearing from the Petitioner, reviewing the relevant documents and discussing the matter, the Committee unanimously agreed that the conduct of dishonesty and fraud with which Petitioner was charged and to which she pled guilty, the subsequent conduct of failing to disclose her involvement in criminal proceedings, and the fact that Petitioner is currently serving a ten-year sentence on probation for those offenses, is conduct which fails to adhere to the high standards demanded of teachers in this State. The Committee unanimously recommended to the Superintendent that Petitioner's application for reinstatement of her teaching license be denied. P. Ex. 2; T. Cornetto pp. 114-16; T. Willis pp. 120-26.

34. The Superintendent denied reinstatement of Petitioner's teaching license. P. Ex. 2; T. Willis p. 116.

35. At the administrative hearing on February 1, 2013, Petitioner testified that she had not yet satisfied all the terms of her probation. T. Pursley pp. 30-31.

36. The Undersigned finds as fact that the testimony of Petitioner is not credible.

37. The Undersigned finds as fact that the testimony of Respondent's witnesses is credible.

CONCLUSIONS OF LAW

1. The State Board of Education may revoke or deny a teaching license for conviction of a crime (including a plea of no contest or guilty), as an adult, if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner. 16 N.C.A.C. 6C.0312(a)(3) The State Board of Education may also revoke or deny a teaching license for any illegal, unethical or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C.0312(a)(8)

2. The State Board of Education has discretion to reinstate a revoked license or grant a new license after denial of a license upon an individual's application submitted no sooner than six months after the suspension, revocation, or denial, and a showing that "the action that

resulted in suspension, revocation, or denial of a license did not involve abuse of minors, moral turpitude or grounds listed in G.S. 115C-325(e)(1)b... .” 16 N.C.A.C. 6C.0312(f)

3. The burden is on Petitioner to demonstrate, by a preponderance of the evidence, that the State Board of Education erred in denying her request for reinstatement of her teaching license. Peace v. Employment Sec. Comm’n, 349 N.C.315, 507 S.E. 2d 272 (1988).

4. Teachers are required in this State, both by Rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as a positive role model for children. 16 N.C.A.C. 6C.0602(b)(2); Faulkner v. New Bern-Craven Board of Education, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984)

5. As our Supreme Court observed in Faulkner:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (emphasis added)

6. Petitioner’s conduct bears a “reasonable and adverse relationship” to the Petitioner’s ability to perform her professional functions in an effective manner, including serving as a positive role model for students.

7. Petitioner’s conduct is not consistent with the high standards of conduct expected of teachers in this State. See Faulkner v. Board of Education, 311 N.C. 42, 316 S.E.2d 281 (1984).

8. Petitioner has not met her burden of proving by a preponderance of the evidence that the State Board of Education erred in denying her request for reinstatement of her teaching license.

9. Respondent did not act arbitrarily or capriciously in denying Petitioner reinstatement of her license to teach in North Carolina.

10. Respondent did not and has not unlawfully deprived Petitioner of any property to which she is entitled.

11. Respondent has not prejudiced the rights of Petitioner nor acted arbitrarily or capriciously.

Based on the foregoing, the Undersigned makes the following:

DECISION

The Undersigned finds and holds that there are sufficient undisputed facts, findings, and evidence in the record to support the Conclusions of Law stated above that the Petition for Contested Case should be denied. The preponderance of the evidence supports the decision by the Respondent and Petitioner has failed to meet her burden to show otherwise.

ACCORDINGLY, based upon the foregoing, it hereby is ORDERED, ADJUDGED, AND DECREED that the relief requested by the Petition for Contested Case is DENIED.

This is a final decision under the authority of N.C.G.S. § 150B-34.

NOTICE

Under the provisions of North Carolina General Statute §150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute §1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 8th day of May, 2013.

Selina M. Brooks
Administrative Law Judge