

BEFORE THE PROFESSIONAL STANDARDS COMMISSION
OF THE STATE OF IDAHO

In the Matter of the Certificates of:)	Case No. 21448
)	
PEGGY ANN FISKE,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND FINAL ORDER OF THE
Respondent.)	HEARING PANEL
)	

The Chief Certification Officer Lisa Colón (CCO) filed an Amended Administrative Complaint against Respondent Peggy Ann Fiske regarding Ms. Fiske’s answers to questions on her application to reinstate her teaching certificate, namely, was Ms. Fiske ever denied a teaching certificate in another State and had she ever been arrested. Ms. Fiske asked for a hearing on the Administrative Complaint. A Hearing Panel of the Professional Standards Commission was convened and held a hearing as noticed beginning at 9:00 a.m. on Friday, July 29, 2016, in the Imagine Conference Room, Education Building, University of Idaho, Moscow, Idaho. Edie McLachlan chaired the Hearing Panel. Pam Asher and Shane Chapman were the other members of the Hearing Panel. Michael S. Gilmore, Deputy Attorney General, advised the Hearing Panel. Brian Church, Deputy Attorney General, represented the CCO. James Piotrowski, Herzfeld & Piotrowski, LLP, Boise, Idaho, represented Ms. Fiske. This written decision of the Hearing Panel reviews the proceedings, makes Findings of Fact and Conclusions of Law, and enters a Final Order that a letter of reprimand be issued to Ms. Fiske.

I. SUMMARY OF THE PROCEEDINGS

The original Administrative Complaint alleged that when Ms. Fiske filed an application for reinstatement of her teaching certificate in December 2014, she checked the “NO” box for the question: “Have you ever had a teaching certificate revoked, suspended, denied, or have you ever voluntarily relinquished a teaching certificate to avoid revocation proceedings in Idaho or any other state?” That Administrative Complaint further alleged that in 1994 the State of Washington had denied Ms. Fiske’s request for a teaching certificate.

Before the hearing, the CCO moved to amend the Administrative Complaint to also

allege that Ms. Fiske checked the “NO” box for the question: “Have you ever been arrested for any felony or misdemeanor in Idaho or any other state, federal or military court?” The Amended Administrative Complaint further alleged that Ms. Fiske had been arrested in 1971 in Illinois on charges that would be a felony or a misdemeanor. At the beginning of the hearing, counsel for the CCO argued in favor of the Motion to File an Amended Administrative Complaint. Counsel for Ms. Fiske opposed the Motion. The Chair orally granted the Motion. Accordingly, this case will be decided under the Amended Administrative Complaint.

The facts were uncontested. As testified by State Board of Education Program Specialist Shannon Haas, Ms. Fiske’s application for renewal of her certificate that expired on August 31, 2014, Exhibit CCO-1, was not processed because it was incomplete; her application that was later processed in December 2014 checked the “NO” box for two of the “legal questions”:

1. Have you ever had a teacher certificate revoked, suspended, denied, or have you ever voluntarily relinquished a teaching certificate to avoid revocation proceedings in Idaho or any other state?

....

3. Have you ever been arrested for any felony or misdemeanor in Idaho or any other state, federal or military court?

Exhibit CCO-3. As Ms. Haas testified and Ms. Fiske acknowledged, in 1994 the Washington State Superintendent of Public Instruction denied Ms. Fiske’s application for a teaching certificate for stating that she had never been arrested. Exhibit CCO-5. As Ms. Haas testified and Ms. Fiske acknowledged, Ms. Fiske had been arrested in Illinois in 1971. Exhibit CCO-6.

Ms. Fiske testified about both the arrest and the denial of an application for a certificate. She explained that she had been arrested in the summer of 1971 on four charges: underage consumption of alcohol and transporting open liquor bottles in a motor vehicle (she cleaned up after a friend’s party and was transporting the bottles used at the party, not all of which were completely empty), possession of stimulants (she had over-the-counter caffeine pills called No Doze, not illegal drugs), and no rear license plate light (the police were investigating a burglary in the area when she was pulled over). She said that she had demanded but was refused a test for blood

alcohol. When the matter came before a judge, Ms. Fiske testified that she was told both by the judge and by her lawyer that the arrest was expunged from the records. See Exhibit CCO-7, Ms. Fiske's 1997 letter explaining her understanding of what had happened, and Exhibit CCO-6, the FBI "rap sheet" which continued to report Ms. Fiske's 1971 arrest. Ms. Fiske testified that 1971 Illinois court records of dismissals were no longer kept, and she could not now document the terms of the dismissal or document whether the dismissal contained an expungement.

As for Washington's denial of her application because Ms. Fiske had failed to report her arrest, Ms. Fiske testified that this denial was based upon the same expunged arrest records, and that she had done nothing wrong to merit being denied a certificate in Washington.

II. THE APPLICABLE LAW

Idaho Code § 33-1208 and § 33-1209 govern this case. They allow the CCO to initiate disciplinary proceedings against certificate holders or applicants for certificates for a variety of grounds set forth in statute and State Board of Education Rules.¹ The statutes and the rules in

¹ Idaho Code § 33-1208 provides in part:

§ 33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds. — 1. The professional standards commission may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

...

d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;

j. Willful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

...

4. Any person whose certificate may be or has been revoked, suspended or denied under the provisions of this section shall be afforded a hearing according to the provisions of section 33-1209, Idaho Code.

5. The professional standards commission may deny the issuance of a certificate for any reason that would be a ground for revocation or suspension.

Idaho Code § 33-1209 provides in part:

(2) Proceedings to revoke or suspend any certificate ... or to issue a letter of reprimand or place reasonable conditions on the certificate shall be commenced by a written complaint Such complaint shall be made by the [CCO] stating the ground or grounds for issuing a letter of reprimand, placing reasonable conditions on the certificate, or for revocation or suspension and proposing that a letter of reprimand be issued, reasonable conditions be placed on the certificate, or the certificate be revoked or suspended. ...

question — the Code of Ethics of the Teaching Profession — prohibit knowingly making false statements on an application for a certificate and fraudulently preparing materials for licensure.²

III. ANALYSIS OF THE LAW AND FACTS

We begin with the arrest. If an arrest is expunged, then an applicant does not knowingly make a false or fraudulent statement about the expunged arrest when she states that she was not arrested. If an FBI “rap sheet” nevertheless reports the arrest, that does not change our analysis; an applicant can rely upon a court expungement of an arrest to answer a question about the expunged arrest even if the expungement is not picked up by the FBI.

Ordinarily, we would expect an applicant to have written documentation of an expungement. Modern recordkeeping and the ease with which paper files can be converted to Portable Document Files (pdf) or other electronic files suggest that recent expungements may be easily proven if there is a question about their existence. Expungement of a 45-year-old, 1971 arrest is another matter. While there was no documentation from 1971 that Ms. Fiske’s arrest was expunged, Ms. Fiske was a credible witness on that point, and she provided the State Department of Education with a similar explanation almost twenty years ago. CCO-Exhibit 7. We therefore find that Ms. Fiske’s answer to the question about arrests was not a material statement of fact that she knew to be false and was not a fraudulent answer to a question on an application because she was entitled to rely upon her understanding that the arrest was expunged.

....

(4) Any such hearing shall be conducted by three (3) or more panel members appointed by the chairman of the professional standards commission

....

(6) ... The hearing panel may ... suspend or revoke the certificate, or ... order that reasonable conditions be placed on the certificate or a letter of reprimand be sent ..., or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

² Idaho State Board of Education Rule Governing Uniformity 76.05, IDAPA 08.02.02.076.05, provides in part:

05. Principle IV. A professional educator exemplifies honesty and integrity in the course of professional practice. Unethical conduct includes, but is not limited to: :

a. Fraudulently altering or preparing materials for licensure or employment;

....

The answer to the question about denial of a license in another state is another matter. We need not debate whether Ms. Fiske was unfairly denied a certificate in Washington. The question was whether she had “ever had a teacher certificate ... denied ... in ... any other state?” The accurate answer to that question was “YES”. In a profession with as many people as the teaching profession and in a country as large as this one, it is inevitable that some teacher somewhere who “did nothing wrong” will be “unfairly” denied a certificate if for no other reason than human institutions are not infallible and life is not always fair. The proper response to this “unfairness” is to acknowledge the certificate denial and to explain it, not to deny it. That is what Ms. Fiske should have done here, but did not. Thus, she knowingly made a false statement of material fact on Item #7, Question 1, regarding denial of a certificate by another State.

That brings us to what discipline we should impose. A letter of reprimand is in order.³ Under these circumstances, no further discipline is warranted. Ms. Fiske is near the end of her teaching career, is likely to teach only part-time in the future, and is without substantial financial resources. Under other circumstances, we might require someone else who falsely answered the question about denial of a certificate to take an ethics class, in this case the experience of going through the hearing and of reading our decision will provide as much ethical training as a formal ethics class would. And we emphasize that if Ms. Fiske ever fills out another application, she must correctly answer the question about denial of a certificate in Washington.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Respondent Peggy Ann Fiske holds a Standard Elementary, All Subjects K/8, Art K/12 Teaching Certificate with the Condition: “For Art: Need to pas Praxis II test #5134.” Exhibit CCO-2.

³ The CCO will issue the letter of reprimand, which must include a sentence like the following:

Pursuant to the directive of the Hearing Panel of the Professional Standards Commission in the Findings of Fact, Conclusions of Law, and Final Order of the Hearing Panel, dated August __, 2016, Ms. Peggy Ann Fiske is hereby reprimanded for knowingly and falsely answering Item #7, Question 1, in her Application for Reinstatement of an Idaho Certificate/Credential dated 8/28/14 and received on 12/11/14.

2. When Ms. Fiske filed an application for reinstatement of her teaching certificate, she checked the “NO” box for the question: “Have you ever had a teaching certificate revoked, suspended, denied, or have you ever voluntarily relinquished a teaching certificate to avoid revocation proceedings in Idaho or any other state?” Exhibit CCO-3.

3. The Washington Superintendent of Public Instruction denied Ms. Fiske’s application for a teaching certificate in an Order dated December 13, 1994. Exhibit CCO-5.

4. When Ms. Fiske filed an application for reinstatement of her teaching certificate, she checked the “NO” box for the question: “Have you ever been arrested for any felony or misdemeanor in Idaho or any other state, federal or military court?” Exhibit CCO-3.

5. Ms. Fiske was arrested in 1971. Exhibit CCO-6. Ms. Fiske was told by a judge and by her lawyer that her arrest had been expunged. She honestly believed that she no longer needed to state that she had been arrested. Exhibit CCO-7.

B. Conclusions of Law

1. This Hearing Panel has authority under Idaho Code § 33-1208 and § 33-1209 to hear this contested case initiated by the Chief Certification Officer against Ms. Fiske.

2. Ms. Fiske knowingly answered the question described in Finding of Fact 2 falsely in violation Idaho Code § 33-1208, subsection 1.d, and willfully violated Idaho State Board of Education Rule Governing Uniformity 76.05, IDAPA 08.02.02.076.05, by that answer.


3. Ms. Fiske did not knowingly answer the question described in Finding of Fact 4 falsely or willfully violate Idaho State Board of Education Rule Governing Uniformity 76.05, IDAPA 08.02.02.076.05, by that answer.

4. This Hearing Panel has authority under Idaho Code § 33-1209 to direct the Chief Certification Officer to issue a letter of reprimand to Ms. Fiske. The form of reprimand found in footnote 3, page 5, is an appropriate reprimand under the circumstances of this case.

FINAL ORDER

IT IS THE FINAL ORDER of this Hearing Panel that the Chief Certification Officer issue a letter of reprimand to Respondent Peggy Ann Fiske. See footnote 3, page 5.

Dated this 16th of August, 2016.



Edie McLachlan
Hearing Panel Chair

Review of Final Order

THIS IS A FINAL ORDER OF THE HEARING PANEL. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of its service date. The Hearing Panel is required by law to dispose of a Petition for Reconsideration within twenty-one (21) days of its filing or the Petition for Reconsideration will be considered to be denied by operation of law. See Idaho Code § 67-5243(3).

Petitions for Reconsideration of this Final Order may be filed by mail addressed to the Professional Standards Commission, Department of Education, Statehouse, Boise, ID 83720-0027, or may be delivered to the Department of Education, Len B. Jordan Building, Room 200, 650 West State Street, Boise, Idaho, and must be received within fourteen (14) days of the service date of this Final Order.

Judicial Review

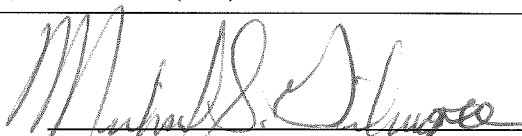
Pursuant to Idaho Code §§ 33-1209(8), 67-5270, and 67-5272, any party aggrieved by this Final Order or by another Order previously entered in this Contested Case may obtain Judicial Review of this Final Order and of all previously issued Orders in this Contested Case by filing a Petition for Judicial Review in the District Court as provided by those sections.

A Petition for Judicial Review must be filed within twenty-eight (28) days of the service date of this Final Order, or, if a Petition for Reconsideration is timely filed, within twenty-eight (28) days of the service date of a decision on the Petition for Reconsideration or denial of the Petition for Reconsideration by operation of law. See Idaho Code §§ 67-5246 and 67-5283.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of August, 2016, I caused to be served a true and correct copy of the preceding FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER OF HEARING PANEL by the method(s) indicated below and addressed to the following:

James Piotrowski Herzfeld & Piotrowski, LLP PO Box 2864 Boise, ID 83701	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: jpiotrowski@idunionlaw.com <input type="checkbox"/> Facsimile: (208) 331-9201
Brian Church Deputy Attorney General Statehouse Boise, ID 83720-0010	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: brian.church@ag.idaho.gov <input type="checkbox"/> Facsimile: (208) 854-8073
Lapwai School District #341 David Aiken, Superintendent 404 S Main St. Lapwai, ID 83540	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: daiken@lapwai.org <input type="checkbox"/> Facsimile: (208) 843-7746



Michael S. Gilmore
 Deputy Attorney General