



Before the Education Practices Commission
of the State of Florida

FILED
Education Practices Commission

SEP 14 1992

BETTY CASTOR, as
Commissioner of Education,
Petitioner,

vs.

RICHARD E. SMYTH,
Respondent.

Final Order

CASE NO. 92-077-RT
EPC INDEX NO. 92-015-S

Respondent, RICHARD E. SMYTH, holds Florida educator's certificate no. 659225. Petitioner has filed an Administrative Complaint seeking suspension, revocation, permanent revocation or other disciplinary action against the license.

Petitioner and Respondent have entered into a Settlement Agreement for resolution of this cause; the Settlement Agreement and the Administrative Complaint are attached to and made a part of this Final Order.

A teacher panel of the Education Practices Commission met on August 7, 1992, in Melbourne, Florida. The Commission accepts the Settlement Agreement as the appropriate resolution of this cause.


It is, therefore, ORDERED that the Settlement Agreement is hereby ACCEPTED and Respondent shall comply with its terms and conditions.

This Order may be appealed, unless otherwise waived, by filing notices of appeal and a filing fee, as set out in Section 120.68, F.S., and Florida Rule of Appellate Procedure 9.110, within 30 days of the date of filing.

DONE AND ORDERED, this 22nd day of September, 1992.

COPIES FURNISHED TO:

Jerry Moore, Program Director
Professional Practices Services


KEITH YARBROUGH, Presiding Officer

Final Order
Richard E. Smyth
Page Two

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Attorney General's Office

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General Counsel

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Robert L. Bedford, Supt.
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1016 Education Avenue
Punta Gorda, Florida 33950

Elanna Silberman, Dir. of Pers.
Charlotte County Schools

Margaret O'Sullivan, Esquire
Department of Education
1701, The Capitol
Tallahassee, Florida 32399

Richard E. Smyth - regular and certified

I HEREBY CERTIFY that a copy of the
foregoing Order in the matter of
BC vs. Richard E. Smyth was mailed
[REDACTED]
Gainesville, FL 32603, this 11th
day of September 1992,
by U.S. Mail.


KAREN B. WILDE, Clerk

RECEIVED

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

JUL 08 1992

BETTY CASTOR, as Commissioner
of Education,

Education Practices Commission

Petitioner,

vs.

CASE NO. 91133-J

RICHARD E. SMYTH,

Respondent.

SETTLEMENT AGREEMENT

COME NOW the Petitioner and Respondent, who hereby stipulate and agree as follows:

1. The Respondent holds Florida teaching certificate 659225, covering the area of English, which is valid through June 30, 1996.
2. At all times pertinent hereto, the Respondent was employed as a teacher at Port Charlotte High School in the Charlotte County School District.
3. The Respondent elects not to contest the allegations set forth in the Petitioner's Administrative Complaint, which is incorporated herein and made a part of this agreement.
4. The Respondent agrees to accept a written reprimand from the Education Practices Commission (EPC) for the conduct described in the Administrative Complaint. A copy of the reprimand shall be placed in the Respondent's certification file with the Department of Education and in his personnel file with the Charlotte County School District.
5. The Respondent agrees to accept a suspension of his teaching certificate commencing on the date of the Final Order

through July 1, 1994.

6. The Respondent agrees to submit to an evaluation by a licensed psychiatrist, psychologist, or mental health counselor, mutually acceptable to the EPC and the Respondent. Within thirty (30) days of reemployment as an educator in any public or private school requiring a teaching certificate in the State of Florida, the Respondent must obtain and submit to the EPC an unconditional release from the above-mentioned licensed psychiatrist, psychologist, or mental health counselor, certifying that the Respondent does not represent a threat to the safety or well-being of students under his supervision or care, and is able to perform his educational and administrative duties in an acceptable and satisfactory manner. The counselor who evaluates the Respondent shall be apprised of the allegations of the Administrative Complaint and consider those circumstances when making the professional determination regarding the Respondent's threat to students and his ability to teach. Should the counselor determine that the Respondent is in need of continuing mental health counseling, the Respondent shall continue such counseling until such time as the counselor determines that the Respondent is no longer in need of professional assistance. All expenses incurred in connection with the evaluation and treatment shall be borne by the Respondent.

7. The Respondent agrees that he shall be placed on probation for a period of two (2) years, commencing upon his reemployment as an educator in any public or private school requiring a teaching

certificate in the State of Florida. In the event that the Respondent's employment in the teaching profession is interrupted for any reason prior to the expiration of the probationary period, the probationary period shall be tolled until such time as the applicant resumes employment as an educator. As conditions of the probation, the Respondent:

(a) shall immediately contact the EPC upon any reemployment as an educator in any public or private school requiring a teaching certificate in the State of Florida, indicating the name and address of the school at which he is employed, as well as the name, address and telephone number of his immediate supervisor;

(b) shall make arrangements for his immediate supervisor to provide the Education Practices Commission with quarterly reports of the Respondent's performance, including but not limited to compliance with school rules and school district regulations and any disciplinary actions imposed upon the Respondent by his immediate supervisor or by the school district;

(c) shall make arrangements for his immediate supervisor to provide the Education Practices Commission with a true and accurate copy of each written performance evaluation or assessment prepared by his supervisor within ten (10) days of its issuance;

(d) shall satisfactorily perform his assigned duties in a competent, professional manner; and

(e) shall violate no law and shall fully comply with all district and school board regulations, school rules, and State Board of Education Rule 6B-1.006.

8. In the event that the Respondent fails to comply with any term or condition of this agreement, the Petitioner will be authorized to file an Administrative Complaint seeking further sanctions or revocation of the Respondent's certificate, based upon violation of the terms of probation set forth herein.


9. The parties acknowledge and the Respondent agrees that any costs associated with the fulfillment of the terms of this agreement and the terms of the Respondent's probation shall be the sole responsibility of the Respondent.

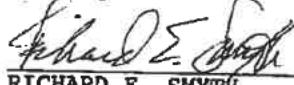
10. This agreement shall be void and shall have no force or effect unless it is signed by all parties or their designated representatives, and accepted by the Education Practices Commission.

11. The Respondent acknowledges that he understands the provisions of the agreement, their legal effect, and his rights under Florida law to either a formal hearing on the allegations of the Administrative Complaint (before a Division of Administrative Hearings Officer) or an informal hearing before the Education Practices Commission. The Respondent specifically waives his right to both a formal or informal hearing, with the exception that the Respondent may appear before the Education Practices Commission in order to urge its adoption of this agreement. The Respondent further acknowledges that he is under no duress, coercion, or undue influence in the signing of this agreement, and that he has the opportunity to receive the advice of legal counsel prior to signing this agreement.

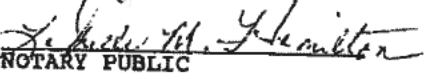
12. The parties agree that this agreement shall be submitted to the Education Practices Commission upon the parties' request that it be adopted as the Commission's final disposition of the charges set out in the Administrative Complaint filed against the Respondent in this proceeding. The Respondent understands that the Education Practices Commission has the discretion to reject this agreement and order a full evidentiary hearing regarding the allegations set forth in the Administrative Complaint, if, in the exercise of its discretion, it deems such an action to be necessary and appropriate. The Respondent waives all statutes and regulatory provisions concerning notice of hearing, and agrees that this Settlement Agreement may be presented to the Education Practices Commission for consideration at its next regularly scheduled meeting, provided that the Respondent received legal notice of said meeting.

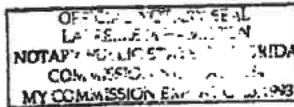
IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on this 7th day of July, 1992.


MARGARET E. O'SULLIVAN, ESQ.
Florida Department of Education
352 Florida Education Center
325 West Gaines Street
Tallahassee, FL 32399
(904) 922-7092
Attorney for the Petitioner


RICHARD E. SMYTH,
Respondent

SWORN TO AND SUBSCRIBED
before me, the undersigned
authority, by RICHARD E. SMYTH
on this 7th day of
July, 1992.


NOTARY PUBLIC
My commission expires:





FLORIDA DEPARTMENT OF EDUCATION
Betty Castor
Commissioner of Education

Karen Wilde
Executive Director
Education Practices Commission

September 21, 1992

Mr. Richard Smyth

[REDACTED]
Gainesville, Florida 32603

RE: Betty Castor vs. Richard Smyth
92-077-RT

Dear Mr. Smyth:

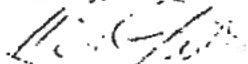
The teacher panel of the Education Practices Commission, as you know, reviewed the matter pending against you on August 7, 1992. Based upon the panel's consideration of this matter and upon the panel's acceptance of your Settlement Agreement, you are hereby reprimanded for writing notes and poems of a personal nature to a female student, making inappropriate comments to her, attempting to engage in an overly familiar relationship with her, using offensive language while teaching and making comments of a sexual nature to students.

This panel, composed of your peers, believes that as a teacher you are required to exercise a measure of leadership beyond reproach. By your actions, you have lessened the reputation of all who practice our profession. Your actions cannot be condoned by the profession nor by the public who employ us.

The Education Practices Commission sincerely hopes it is your intention to never allow this situation to occur again or indeed, to violate any professional obligation in fulfilling your responsibility as an educator. To violate the standards of the profession will surely result in further action being taken against you.

This letter of reprimand is being placed in your state certification file and a copy sent to the Charlotte County School Board for placement in your personnel file.

Sincerely,


Keith Yarbrough
Presiding Officer

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

BETTY CASTOR, as Commissioner
of Education,

Petitioner,

vs.

CASE NO. 91133-J

RICHARD E. SMYTH,

Respondent.

AMENDED ADMINISTRATIVE COMPLAINT

Petitioner, BETTY CASTOR, as Commissioner of Education, files this Administrative Complaint against RICHARD E. SMYTH, Respondent. The Petitioner seeks the revocation or suspension of the Respondent's teaching certificate, or other administrative penalty, pursuant to Sections 120.60, 231.261, 231.262, 231.28, 231.36(2), and 231.546(2), Florida Statutes, and pursuant to Rule 6B-1.006, F.A.C., Principles of Professional Conduct for the Education Profession in Florida.

The Petitioner alleges:

1. The Respondent held Florida teaching certificate 659225, covering the area of English, which was valid through June 30, 1996.
2. At all times pertinent hereto, the Respondent was employed as a teacher at Port Charlotte High School in the Charlotte County School District.
3. In the Fall semester of 1990 the Respondent was teaching Speech and dual credit English. [REDACTED] was enrolled in both classes. As part of his English class, Respondent required [REDACTED]

to write and submit poems to be graded.

4. On or about October 1990, the Respondent began to write lengthy passages on [REDACTED]'s graded assignments. These passages included critical analysis, poetry and insights of an extremely personal nature. Such insights included why he was not permitted to have premarital sex with his wife; the root of his psychological problems; the religious conflicts within him; the torment and isolation he felt as a poet; and why he, as a poet, craved companionship. Respondent also expressed his desire for [REDACTED] to continue "opening [her] doors" because he wanted to "see what's on the inside."

5. As the semester progressed, the Respondent began to write more poems in response to [REDACTED]'s assignments. Respondent interpreted symbols in [REDACTED]'s works to represent him. Respondent copied various poems and works from other authors, giving them to [REDACTED] to read on her own.

6. After submitting poems she had been asked to write over Christmas break, the Respondent "answered" with a twelve page booklet of his poetry entitled Apostle Poems: a book of hours. The booklet contained the dedication, "from me to you." Respondent admitted becoming too involved with [REDACTED] and her work by stating, "I have risked the dissolution of my family by feeling these poems too intensely."

7. [REDACTED] was convinced that the Respondent believed they were having some kind of "relationship" through their poetry and that the booklet was an invitation for [REDACTED] to intensify this

"relationship." [REDACTED] wrote Respondent a note attempting to explain that her poems in no way intended to refer to him.

8. Respondent replied in a note to [REDACTED], admitting and apologizing for his incorrect interpretations. Respondent described the despair he felt from projecting himself into her poems. Respondent also referred to the suicide of a young poet and to his own inability to cope with depression.

9. [REDACTED] was extremely upset by the personal nature of Respondent's poems and writings. [REDACTED] was afraid to tell anyone about the writings believing that the Respondent would give her a bad grade, be fired, or would feel betrayed by [REDACTED].

10. Respondent regularly removed [REDACTED] from her 7th period French class in order to talk with her. At one point, the Respondent was removing [REDACTED] from her class two times per week. A majority of the time, the discussions were of a personal nature. [REDACTED] became uncomfortable with situation and requested to remain in her French class. After [REDACTED] would no longer meet with him, the Respondent, determined to maintain contact, would often walk into [REDACTED]'s French class uninvited to hand her material.

12. Respondent also would seek out [REDACTED] after school or between classes to give her poems, literary works or to talk.

13. Respondent called [REDACTED] at home when she was out ill, claiming to have school business that could not wait to be discussed.

14. On one occasion, the Respondent climbed into the passenger seat of [REDACTED]'s car without [REDACTED]'s permission. Respondent then

proceeded to thumb through her audiotapes. A friend of [REDACTED] who was aware of [REDACTED]'s apprehensions about the Respondent, remained in the parking lot until the Respondent left. When Respondent did leave, he "borrowed" two cassettes of [REDACTED]'s.

15. In December of 1991, while [REDACTED] was typing at a computer terminal in the guidance office, Respondent visited [REDACTED] between classes to see how she was doing and to bring her lunch. When asked by Mr. Duffy what he was doing there, Respondent stated, "Oh, I'm just bringing some pizza to my girl."

16. Respondent asked [REDACTED] if she would be in a movie which he and Mr. Probst were making. The movie was to be based on a poem [REDACTED] had read. Respondent stated to [REDACTED], "you won't have to get naked... although that's what the poem called for."

17. In an effort to reduce contact with the Respondent, [REDACTED] arranged to transfer out of his speech class. Upon hearing this, Respondent went to [REDACTED]'s new teacher without [REDACTED]'s knowledge, and made arrangements so that [REDACTED] would not have to leave his class. Respondent told [REDACTED], "you can't leave, I have too many things to teach you." Despite his efforts, [REDACTED] was taken out of Respondent's class.

13. [REDACTED] was finally removed from Respondent's English class by the school administration after midterms and was placed alone in independent study. This action prompted questions from others as to why she would suddenly leave a class in which she doing so well.

19. After being removed from both classes, Respondent attempted to maintain contact with [REDACTED]. Respondent would repeatedly cross

██████ in the hallways. ██████ could not avoid the Respondent despite changing her paths to class.

20. In April 1991, after ██████ was assured that she would no longer have contact with the Respondent, he appeared in the classroom where ██████ was to give her keynote speech. ██████ felt very uncomfortable and walked out. ██████ later gave her speech out of the Respondent's presence.

21. Respondent would often focus on the sexual nature of the assigned readings during class. Students believed and even joked that any student paper with a sexual tone or ambiguous theme prone to a sexual interpretation would get high praise from the Respondent.

21. Respondent read aloud a poem in class he thought so was well written that he told the class, "You know, poetry can be orgasmic. . . . So basically what you just witnessed was me having an orgasm over a poem."

22. Respondent had one of ██████'s poems published without her permission in Creative Writing Magazine. Respondent also had submitted two of ██████'s poems without her knowledge or consent to The Cathartic, a magazine described as containing poems with "dark (many times sexual) undertones."

23. Respondent frequently used offensive and inappropriate language while teaching. The Respondent also held up his middle finger at the class in an obscene gesture.

24. On one occasion, the Respondent unzipped his fly in front of the class to illustrate a point.

25. Respondent resigned from his position with the Charlotte County School District on August 10, 1991.

The Petitioner charges:

FIRST COUNT: The allegations set forth herein are in violation of section 231.28(1)(h), Florida Statutes, in that the Respondent has otherwise violated the provisions of law or rules of the State Board of Education the penalty for which is the revocation of the teaching certificate.

SECOND COUNT: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(a), F.A.C., in that the Respondent did not make a reasonable effort to protect students from conditions harmful to learning or to health or safety.


THIRD COUNT: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(e), F.A.C., in that the Respondent intentionally exposed a student to unnecessary embarrassment or disparagement.

FOURTH COUNT: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(h), F.A.C., in that the Respondent has exploited a professional relationship with a student for personal gain or advantage.

WHEREFORE, the Petitioner recommends that the Education Practices Commission impose an appropriate penalty pursuant to the authority provided in Sections 231.262(6) and 231.28(1), Florida Statutes, which penalty may include a reprimand, probation, restriction of the authorized scope of practice, administrative fine, suspension, revocation, or permanent revocation of the

teaching certificate, or combination thereof, or any other penalty provided by law, for the reasons set forth herein, and in accordance with the Explanation and Election of Rights forms which are attached to and made part of this Administrative Complaint.

EXECUTED on this 24th day of June, 1992.


BETTY CASTOR, as Commissioner
of Education
State of Florida