

BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION
OF THE STATE OF OREGON

In the Matter of the Teaching License of:

MARY ANNA SWEARINGEN

FINAL ORDER BY DEFAULT

Case No. 103942

On July 17, 2002 the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Mary Anna Swearingen, in which the Commission proposed to deny Ms. Swearingen's application for an Oregon Teaching License.

Ms. Swearingen requested a hearing. On October 21, 2002, the Commission filed an Amended Notice of Hearing, and the case was scheduled for hearing before Administrative Law Judge Steve Rissberger on January 17, 2003. On December 23, 2002, Walter F. Brown, Attorney at Law, wrote a letter to Mr. Rissberger indicating he had agreed to represent Ms. Swearingen and requested a postponement. Mr. Rissberger granted the request for postponement and rescheduled the case for hearing on March 10, 2003. On that date, a hearing was held, and Mr. Rissberger heard testimony from several witnesses and admitted various exhibits into evidence. The hearing was then continued to April 25, 2003. On April 18, 2003, Mr. Brown requested another postponement on several grounds. He also informed Mr. Rissberger that he and Ms. Swearingen were married on March 30, 2003. Mr. Rissberger granted the Motion for Postponement and rescheduled the hearing for June 26, 2003. On March 20, 2003, Mr. Brown withdrew as Ms. Swearingen's attorney. On June 18, 2002, Attorney Steven J. Sherlag informed Mr. Rissberger that he had been retained to represent Ms. Swearingen in this case and requested a postponement. On June 24, 2003, Mr. Rissberger granted a postponement, and the case was eventually re-scheduled for December 10, 2003.

On September 8, 2003, the Commission filed a Second Amended Notice of Hearing which proposed to deny Ms. Swearingen's application for a teaching license and to revoke her right to apply for a teaching license under ORS 342.175(1). On December 2, 2003, Mr. Sherlag wrote a letter to Mr. Rissberger indicating on behalf of Ms. Swearingen that she was withdrawing her application for a teaching license and that she intended to allow the Commission to enter a default order on the Second Amended Notice of Hearing. Based on the above, the Commission finds Ms. Swearingen to be in default and enters this Order by Default based on the hearing record to date and the files and records of the Commission. The Findings of Fact set forth below are based on the Commission's files and records, including exhibits A1 through A11 of the hearing file in this case.

FINDINGS OF FACT

1. Mary Anna Swearingen¹ held an Oregon Basic Teaching License from May 27, 1977 to March 29, 1981, when the license expired. She next held a Substitute Oregon Teaching License from May 14, 1996 to March 29, 2000, when the license expired.

2. On November 5, 1994, Ms. Swearingen married Clayton Victor Swearingen. There is one child born of this marriage, Shayann Machaela Swearingen, born August 22, 1995.

3. The Swearingens were divorced on September 22, 1997, and the court awarded custody of Shayann to Ms. Swearingen, subject to Mr. Swearingen's rights to reasonable and seasonable visitation.

4. In about December 1999, Ms. Swearingen made allegations to child protective service agencies in Washington and in Oregon that her former husband had sexually abused Shayann. Child protective agencies in both Oregon and Washington investigated these

allegations and concluded that they were unsubstantiated. During this period, Ms. Swearingen attempted to obtain restraining orders against Mr. Swearingen in both Washington and Oregon; the courts in each state denied these motions.

5. On March 31, 2000, Mr. Swearingen obtained a custody order in Multnomah County Circuit Court, awarding him temporary custody of Shayann.

6. In the early spring of 2000, Ms. Swearingen left her home with Shayann and with two children by a previous marriage without informing Mr. Swearingen. She later admitted that she removed Shayann in order to prevent Mr. Swearingen from having access to her.

7. Ms. Swearingen first attempted to take the children to Canada. When she was denied access by Canadian officials, Ms. Swearingen put the children on a bus and traveled to Dallas, Texas. During the next several months, Ms. Swearingen and the children lived in various locations, including homeless shelters in Texas and Louisiana. Throughout this period, Ms. Swearingen did not inform Mr. Swearingen or the child protective services agencies of her location or the location of Shayann.

8. On November 22, 2000, Ms. Swearingen and the children were apprehended by FBI agents in Baton Rouge, Louisiana. Ms. Swearingen was taken into custody and the children were returned to their father in Oregon.

9. On January 11, 2001, Ms. Swearingen appeared at the Multnomah County District Attorney's office and was interviewed by Detective Sergeant J. Eckhart of the Portland Police Bureau. In that interview Ms. Swearingen acknowledged that she had removed the children without her husband's consent and had deliberately concealed her location and Shayann's location for several months. She continued to make allegation of sexual abuse against

¹ Ms. Swearingen was married in March 2003 and has changed her name to Mary Anna Brown.

Mr. Swearingen. She expressed no remorse for her actions and told Officer Eckhart that she would attempt to remove Shayann again if given the opportunity.

10. Based on the above, Ms. Swearingen was charged with a crime. She entered a plea of no contest and was convicted in Multnomah County Circuit Court of the crime of Custodial Interference in the Second Degree on October 1, 2001.

11. After Shayann was returned to him, Mr. Swearingen obtained a restraining order in the Clackamas County Circuit Court on January 19, 2001. This order restrained Ms. Swearingen from intimidating, molesting, interfering or menacing Mr. Swearingen or Shayann. The order further restrained Ms. Swearingen from entering or attempting to enter Mr. Swearingen's residence and place of employment or Shayann's school.

12. On February 25, 2002, the Multnomah County Circuit Court awarded permanent custody of Shayann to Mr. Swearingen. The court found in its order that Ms. Swearingen "is on a campaign to prove that [Mr. Swearingen] has abused the parties' child. Her allegations of abuse are unfounded." Based on recommendations of the child's psychologist, the court ordered that Ms. Swearingen have no parenting time with Shayann and that Ms. Swearingen not be allowed supervised parenting times until she had undergone therapy with a psychologist for a sustained period of time.

13. On December 24, 2001, Ms. Swearingen appeared at Mr. Swearingen's residence unannounced and without Mr. Swearingen's consent. She refused to leave the house after Mr. Swearingen requested that she do so. As a result, she was charged with contempt of court for violation of the restraining order.

14. On April 22, 2002, Ms. Swearingen was found guilty by the Clackamas County Circuit Court of violation of a restraining order and contempt of court. The court placed her on

probation for 12 months, required that she have no contact with Mr. Swearingen and get a mental health evaluation and treatment as recommended by the evaluator.

CONCLUSIONS OF LAW

1. Ms. Swearingen's conviction for Custodial Interference in the Second Degree constitutes gross unfitness in violation of OAR 584-020-0040(5)(c).

2. Ms. Swearingen's conviction of contempt for violation of a restraining order on December 24, 2001, constitutes gross unfitness in violation of OAR 584-020-0040(5)(c).

DISCUSSION AND ORDER

Because Ms. Swearingen has withdrawn her application for a teaching license, any issue concerning the Commission's denial of the license is moot. However, the Commission retains the authority to decide whether to suspend or revoke her right to apply for a license. In determining an appropriate sanction, the Commission looks at the factors listed under OAR 584-020-0045 and any other relevant factors. The Commission finds it significant that Ms. Swearingen has expressed no remorse for her actions, and that she told Officer Eckhart that she would abscond with Shayann again if given the opportunity. Her action involved the welfare of a 4 1/2 year-old child and indicates that she may not be trusted to provide a safe and secure environment for children in a school setting. She has shown a disregard for the law and a refusal to follow legal processes if they do not serve her purposes. For these reasons, a revocation of Ms. Swearingen's right to apply for a license is appropriate.

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Based on the foregoing, the right of Mary Anna Swearingen to apply for an Oregon Teaching License is revoked.

IT IS SO ORDERED this 15th day of January 2004.

TEACHER STANDARDS AND PRACTICES COMMISSION


Victoria Chambefalain, Executive Director

APPEAL RIGHTS: You are entitled to judicial review of this order in accordance with ORS Chapter 183.480. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon within 60 days from the date of this order. Tape recordings of Administrative Hearings are retained 90 days after the date of the final order.