

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-1516
)	
DEBORAH A. EDWARDS,)	
)	
Respondent.)	
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PINELLAS COUNTY SCHOOL BOARD,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-1517
)	
RICHARD CORBIN,)	
)	
Respondent.)	
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RECOMMENDED ORDER

A hearing was held in these consolidated cases in Largo, Florida on June 1, 1995, before Arnold H. Pollock, a Hearing Officer with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Keith B. Martin, Esquire
Pinellas County Schools
Post Office Box 2942
Largo, Florida 34649-2942

For Respondents: Robert F. McKee, Esquire
Kelly & McKee
Post Office Box 75368
Tampa, Florida 33675-0638

STATEMENT OF THE ISSUES

The issue for consideration in this case is whether the Pinellas County School Board can cancel Respondents' Professional Service Contracts and terminate their employment due to their failure to meet certification requirements.

PRELIMINARY MATTERS

By letters dated March 13, 1995, Dr. J. Howard Hinesley, Superintendent of the Pinellas County Schools, advised each Respondent herein that due to changes in certification requirements in those individuals' program area, it was

necessary to recommend to the School Board that their Professional Services Contracts to teach in the Pinellas County Schools be cancelled. Notwithstanding that proposed action, however, the parties were advised that the School Board would continue to employ each Respondent on a year to year basis without a Professional Services Contract. In response, each Respondent requested a formal hearing, and this hearing ensued.

At the hearing, the Petitioner presented the testimony of Dr. Seymour Brown, Assistant Superintendent for Personnel, and Dr. James Ross, Assistant Superintendent for Career, Technical and Adult Education. Respondents each testified in their respective behalf and presented the testimony of Jade Moore, Executive Director of the Pinellas County Teacher's Association, as well as that of Carol D. Kamfferman, a Certification Technician for the Board. Petitioner introduced Petitioner's Exhibits 1 through 8, and Respondents introduced Respondents' Exhibits A through D. Though admitted into evidence, Respondents' Exhibits C and D were not delivered to the Hearing Officer.

A transcript of the proceeding was furnished, and subsequent to the receipt thereof both parties submitted Proposed Findings of Fact which have been ruled upon in the Appendix to this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to the issues herein the Pinellas County School Board, (Board), was the agency responsible for the provision of public education from preschool through primary and secondary schooling to vocational and adult technical courses in Pinellas County. Respondent Edwards has taught agricultural subjects including horticultural service, animal service and small and large animal services, among other courses she has taught at Tarpon Springs High School since July, 1990. Respondent Corbin, Edwards' brother, has taught at Countryside High School since 1989 in the fields of horticulture, small and large animal service, and practical skills agriculture for grades 9 - 12.

2. Neither Respondent Edwards or Respondent Corbin has a Bachelor's degree in agriculture or in any other field. Edwards has an Associate of Science degree in veterinary technology and has taken courses in agricultural education for certification at the University of Florida as well as 20 credit hours at the University of South Florida in a course in technical vocational training programs she was required to take. She was certified by the State Department of Education in horticultural science and agricultural production in 1992.

3. Respondent Corbin has between 30 and 40 college credit hours. About 2 years after starting work, when he finished the beginning teacher program and the required technical vocational training courses, he was certified by the state to teach horticulture and agricultural production. This allowed him to teach students in grades 9 - 12, and at the adult technical/vocational level.

4. According to Dr. Brown, the Assistant Superintendent for Personnel, sometime prior to March, 1995 it was reported to him that the School Board had two teachers in the agricultural program who were not properly certified. These teachers are the Respondents herein. By state law, the Respondents are not properly certified at the 9 - 12 grade level, but they can teach at the vocational/technical level. Under the provisions of Department of Education Rule 6A-4.054, teachers must hold a bachelor's degree in agriculture or a master's degree with an undergraduate major in agriculture in order to be certified to teach that subject at the 9 - 12 grade level. Neither Respondent has that qualification.

5. When Dr. Brown found out about the problem, he consulted with his staff and then informed the Superintendent of the situation. Dr. Brown also contacted the State Board of Education to see if these Respondents could stay in their current positions. The response received from the State Board of Education indicated the teachers could be considered "out of field" teachers, in accordance with Rule 6A-1.0503, F.A.C., but would need to take a minimum of 6 semester hours of college credit each year to obtain a bachelor's degree in agriculture.

6. After receiving that information, Dr. Brown met with both Respondents and advised them of the situation and what they had to do. At that time the indication he received from them was that they would not consider going to school for 6 credits each year because, as they indicated, this was not their fault. According to Dr. Brown, neither Respondent had taken the required courses this year, and it is his position that though they may be retained as teachers, they cannot be offered a Personal Services Contract unless they do. All that would be available to them would be a year to year appointment.

7. It is quite evident that the 1989 change to the certification rule which creates the problem in this case, that of requiring a teacher in the field of agriculture to have a degree in that area, was not widely publicized, and even high ranking members of the Board staff in Pinellas County were not actively aware of its existence for several years after it was promulgated.

8. Of the two Respondents, Mr. Corbin was hired prior to 1989, and Respondent Edwards was hired after 1989. Both were offered and received Personal Service Contracts after the rule was changed and, in fact, notwithstanding the Board's letter of March 13, 1995, indicating the intention to remove the Personal Service Contract of each, by letter dated in April, 1995, each Respondent was advised of the issuance of a Personal Service Contract for the 1995-1996 school year.

9. This creates a problem for the Board in that, under Florida law, if a program is not properly staffed with properly certified instructors, the state funding for that program can be reduced, and this could, in this case, amount to a substantial amount of money lost to the Board.

10. Dr. Brown considers both Respondents to be excellent teachers whom the Board would like to keep, and he would like to see them participate in the program which would allow them to remain as certified teachers by taking the 6 credit continuing education courses per year. This would be difficult for both Respondents, however. First, the courses to be taken must be approved by the Board as leading to a degree in the teacher's area of expertise. In this regard, Dr. Brown does not know if any of the courses that would qualify for the Respondents are available within a 100 mile radius of Pinellas County. By the same token, he also does not know if the Board would provide financial or time help to the Respondents in the event the courses were available.

11. Another possibility would be for the Respondents to take courses at the University of Florida on Friday nights and Saturdays over a period of time, or during the summer. In that regard, however, Respondent Edwards' inquiry of the University clearly indicates it is not easy to get the required courses at the time when they are needed and Respondents are available. Someone trying to work toward a degree on such a part time basis could take an unreasonably extended period of time to get all the core and prerequisite courses to those which lead toward the degree in the specialty. Notwithstanding this, Dr. Ross

is not aware of any instance where the Board has ever waived the requirement for courses because courses were not available locally.

12. The current situation came as a great surprise, specifically to Mr. Corbin. In March, 1992, he was called in by his Vice-Principal, Mr. Moore, and told he was unqualified to teach horticulture. At that same time, however, he was advised as to what he had to do to come up to certification standards, and he took the required courses. As he understood it, that was all that was necessary. With the courses he took at this point, and all the TVT courses he had taken previously, he believed he was in good standing to receive his Personal Services Contract which, in fact, he did receive in April, 1994.

13. However, he first learned of the instant crisis on March 13, 1995 by a copy of a letter to his Principal from Dr. Brown advising that Mr. Corbin's Personal Service Contract was being cancelled. There was no explanation and no reason given then, and Mr. Corbin got no answer to his questions as to the reason for this action. As a result, he sought the assistance of the union.

14. Approximately 7 to 10 days after receipt of the letter, Mr. Corbin was advised by Dr. Brown that his only alternative, if he wanted to continue teaching at Countryside, was to take the courses that would be required for an "out of field" teacher. At this point, Mr. Corbin inquired about the availability of courses and found that a Bachelor's degree in Agricultural Science is available only at the University of Florida. There are no courses offered locally that would help him. He did not, however, check with the University of Florida to see what the availability of the courses was there.

15. Mr. Corbin works from 6:45 AM to 3:00 PM each day at school. He also has a personal lawn maintenance business and he does a lot of extra volunteer work for the school helping out at school fairs, banquets and other similar functions. He has taught summer school off and on. He claims that if he had been aware of the change in the requirements in 1990 when they first went into effect, he would have chosen another career instead of staying with agriculture. He asserts he might well have gone on to get his undergraduate degree and a law degree, but at this time it is too late for that.

16. Mr. Corbin realizes that if he wishes to continue his Personal Service Contract he must take the required courses as an "out of field" teacher. Otherwise he would be no more than an "appointee" to his position on a year to year basis. This would be a very tenuous and stressful position to be in. Such a person serves at the pleasure of the Principal, and Mr. Corbin does not want to be in that situation. However, even though he checked on the local availability of courses and found there were none to help him, he did not check what courses were available at the University of Florida, and he asserts at this time that if any were available he could take during the summers, he would do this.

17. Ms. Edwards first learned of the certification problem when she was advised by an official at the School Board that in order to teach animal science for grades 9 - 12 she had to take a course at Seminole Education Center. She was also told that she would be teaching "out of field", and in order to continue with a Personal Services Contract "out of field" she had to take the additional 6 credit hours per year. She was not aware of the implementation of the 1989 rule change which requires the bachelor's degree. Had she known at any time up until March, 1995 when she first learned of it, she claims she probably would have worked toward a Bachelor of Science degree so she could teach in veterinary technology. The requirements for this would be 120 more hours which

she could get only at the University of Florida. The credit hours she earned working toward her Associate degree will not transfer.

18. After Ms. Edwards received the March 13, 1995 letter, she inquired and found she could not get the 6 credit hours she needed for this year before the end of the school year. The advisor at the University of Florida gave her a list of courses she could possibly take locally, but she was given no guarantee they would be transferable toward a degree program.

19. Ms. Edwards is currently enrolled in a 3 hour math course but does not know if it will go toward certification. She contends Dr. Brown did not tell her anything about teaching without a contract, but she would not agree to doing that as an appointee. She feels it would be tenuous and she wants the security of a contract.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

21. The Pinellas County School Board by this action seeks to cancel the Respondents' professional services contracts because they no longer meet the certification requirements for their program areas, which requirements were changed in 1989 by the Florida Legislature. The Board has the burden of proof to establish, by a preponderance of the evidence, that it has complied with the applicable provisions of the Florida Statutes.

22. Section 231.26(3)(a)1, Florida Statutes, requires that in order to be awarded a professional services contract:

...the member must hold a professional certificate as prescribed by s. 231.17 and the rules of the State Board of Education.

23. One of the requirements for qualification to hold a professional services contract, under Chapter 231, Florida Statutes, is a bachelor's or higher degree from an accredited institution of higher learning, but such degree shall not be required in areas approved in rule by the State Board of Education as a non-degreed area. (See Section 231.17(1)(c)3, Florida Statutes.

24. Rule 6A-4.054, F.A.C., dealing with specialization requirements for certificates in agriculture for grades 6 through 12, provides two options for certification. These are:

(1) Plan One. A bachelor's or higher degree with an undergraduate or graduate major in agriculture which includes at least thirty (30) semester hours in the major with credit in animal science, plant science, agricultural mechanics, and food and resource economics, or

(2) Plan Two. A bachelor's or higher degree with thirty (30) semester hours in agriculture to include the areas specified below:

- (a) Three (3) semester hours in soil science.
- (b) Three (3) semester hours in agricultural

mechanics.

(c) Three (3) semester hours in food and resource economics.

(d) Three (3) semester hours in animal science.

(e) Three (3) semester hours in agronomy.

(f) Three (3) semester hours in ornamental horticulture.

(g) Three (3) semester hours in entomology.

25. Section 231.36(3)(a)3(e), Florida Statutes, makes it mandatory for a school board to renew an existing professional services contract every year unless it is cancelled in a proceeding affording the teacher due process. In the instant cases, neither Respondent possesses even the initial bachelor's degree in agriculture required by the Rule of the State Board of Education. Both Respondents have some college credits within the required discipline, but neither has completed all or a major portion of the requirements for a degree in that area.

26. Prior to the 1989 change in the certification rule, teachers who did not possess the college credentials were permitted to teach agriculture in the sixth to twelfth grades. Respondent Corbin was hired before 1989 but Respondent Edwards was hired after that. Both Respondents held continuing contracts, and both Respondents were renewed yearly until recently, when the situation, which inadvertently had been allowed to exist improperly, was discovered. At that point, each Respondent was advised of the requirements which would allow them to continue to hold the continuing contracts they held. Included in this was that they each earn six semester hours toward a bachelor's degree before the beginning of the 1995-1996 school year.

27. There is little doubt that it is extremely difficult to acquire the required semester hours in the requisite subject matter in the Hillsborough/Pinellas County area. None of the colleges in this area offers appropriate courses. The required courses are available at the University of Florida, but this is a substantial distance to travel, and there is no guarantee that the specific courses desired will be available at a time convenient to either Respondent.

28. An alternative to termination of employment does exist and this alternative was offered to each Respondent. Since the requirements of the statute and rule apply only to professional services contracts, both Respondent could, and would, be employed by the Board under year to year contracts. Both respondents consider this an unacceptable situation, however.

29. Respondents urge that because the requirements changed while both were teaching in the Pinellas County school system, and because neither was advised they were teaching in an ineligible status until March, 1995, even though the Board knew of the change as early as March, 1992, the Board is now equitably estopped from terminating their contracts. Both contend that had they been advised of the situation when the disqualification became known to the Board, they would have pursued alternative career options. Mr. Corbin, for example, asserts he would have pursued a career in the law notwithstanding the fact he has only 30 to 40 college credits which would go toward a bachelor's degree. Ms. Edwards would still need 120 credit hours to get her bachelor's degree in veterinary technology.

30. The Respondents' reliance on equitable estoppel is not well placed. Neither has shown that he or she acted in reliance of a representation made by

the Board to his or her detriment. Both continued to work for the Board in the position they held until the fact of their lack of appropriate credentials was discovered. Only Ms. Edwards even looked into the opportunity to earn the required credentials, and neither took advantage of the opportunity to continue their employment under an annual contract until they could earn the required credentials.

31. Further, the Board has established that it has afforded the Respondents substantial due process. It has offered them the opportunity to remain employed under professional services contracts while they pursue the annual six hours toward the required degree status or take year to year contracts. Both refused. When, without any viable alternative available to it, the Board thereafter advised Respondents their professional services contracts were not to be renewed, they were offered the opportunity for formal hearing. Little more can be done to afford due process.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is, therefore:

RECOMMENDED THAT the Pinellas County School Board terminate the professional services contracts of the Respondents, Deborah Edwards and Richard Corbin.

RECOMMENDED this 24th day of July, 1995, in Tallahassee, Florida.

ARNOLD H. POLLOCK, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of July, 1995.

APPENDIX TO RECOMMENDED ORDER

The following constitutes my specific rulings pursuant to

Section 120.59(2), Florida Statutes, on all of the Proposed Findings of Fact submitted by the parties to this case.

FOR THE PETITIONER:

1. - 16. Accepted and incorporated herein.
17. & 18. Accepted but not relevant to any issue herein.
19. Accepted and incorporated herein.
20. Irrelevant to any issue herein as a Finding of Fact.

FOR THE RESPONDENTS:

1. - 16. Accepted and incorporated herein.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency which will issue the Final Order in this case concerning its rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency which will issue the Final Order in this case.