

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WALTON COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                            )  
  )  
vs.    )     Case No. 99-1904  
  )  
ANN FARRIOR,                                )  
  )  
          Respondent.                        )  
\_\_\_\_\_                                      )

RECOMMENDED ORDER

This cause came on for formal hearing on March 3, 2000, in DeFuniak Springs, Florida. The case was heard by P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings. The appearances were as follows:

APPEARANCES

For Petitioner: Joseph L. Hammons Esquire  
Hammons & Whittaker, P.A.  
17 West Cervantes Street  
Pensacola, Florida 32501

For Respondent: George R. Meade, II, Esquire  
Clark, Pennington, Hart, Larry,  
Bond, Stackhouse & Stone  
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STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Petitioner school board has good cause to reject the Walton County School superintendent's recommendation of Ann Farrior

(Respondent) for renewal of an annual contract to serve in the position of school psychologist.

PRELIMINARY STATEMENT

This cause arose upon the rejection of the Walton County School Board of its superintendent's nomination of Ann Farringham to fill the position of school psychologist, as a renewal of a previously fulfilled annual contract with the Respondent. The rejection occurred on April 15, 1999, and the Respondent was notified of that Board action by letter of April 21, 1999. Thereafter, the Respondent timely availed herself of her rights to a hearing designed to protect her substantial interests pursuant to Section 120.57(1) and Section 120.569, Florida Statutes.

The cause came on for hearing as noticed. The Respondent's Exhibits numbered 1-5 were admitted. The Petitioner's Exhibits numbered 1-8, as well as 12, 13, and 14, were admitted into evidence. Additionally, the Petitioner presented the testimony of witnesses Zane Woodrow Sunday, Personnel Director of Walton County Schools; Ann Farringham, the Respondent; and John F. Bludworth, Jr., Superintendent of the Walton County School District in this case. The Respondent presented the testimony of Dr. Lee Revell Graves, Nancy Elaine Holder, and the Respondent's testimony on her own behalf.

After completion of the hearing, which occurred on March 3, 2000, the parties were given the opportunity to file proposed findings of fact and conclusions of law in the form of proposed recommended orders, some two weeks after the filing of a transcript of the hearing with the Administrative Law Judge. The Transcript was filed on March 13, 2000. The parties timely availed themselves of the right to submit Proposed Recommended Orders and those Proposed Recommended Orders have been considered in the rendition of this Recommended Order.

#### FINDINGS OF FACT

1. Ann Farrior was employed as a school psychologist by the Walton County School District for the 1998-1999 school year. She was employed on the recommendation of the superintendent and under an annual contract for that school year.

2. Title 20, United States Code, Chapter 33, is known as the Individuals with Disabilities Education Act (IDEA). The intelligence testing and questions regarding assessment and placement of exceptional education students is governed by that federal statute and rules pendent thereto. The federal regulations implementing the IDEA provide certain federal funds to assist in their implementation by local school districts. The Walton County School District receives federal funding to implement the IDEA. The failure to comply with appropriate federal regulations governing testing, assessment and placement

of exceptional education students can result in a loss of such federal funding for the District.

3. The Superintendent, Mr. Bludworth, nominated Ms. Farrior for the school psychologist position at issue for the 1998-1999 school year with the understanding that although she was not certified as a school psychologist, she was eligible to be certified as such. During the course of her employment as a school psychologist that school year, state audit personnel determined that she was not properly credentialed to administer intelligence testing as part of the assessment process for exceptional education students, which is necessary to the formulation of Individualized Educational Plans (IEPs) which is in turn a necessary element of the ultimate decision of proper placement of such students in the educational system in a school district. In view of this situation, Mr. Sam Goff of the Bureau of Instructional Support and Community Services of the Department of Education wrote the superintendent on January 20, 1999, outlining specific requirements that the District would have to meet in order to bring itself into compliance with the IDEA as a result of Ms. Farrior's ineligibility to administer intelligence testing as part of the assessment and evaluation process for exceptional students.

4. The superintendent also received notice by memorandum of January 28, 1999, and by letter of January 29, 1999, from the Auditor General's staff and the Auditor General (in evidence as

Petitioner Exhibits 4 and 5), that audit findings had determined that the District employed a person as a school psychologist (the Respondent) concerning whom school district records did not indicate a basis for that person being qualified for the school psychologist's position. The Auditor General's findings noted that the position description for school psychologist employed by the school district included responsibilities for administering testing and assessing placement for all exceptional education students. The preliminary findings noted that the employee, the Respondent, then serving as a school psychologist possessed only a temporary Florida teaching certificate in "psychology" which had expired on June 30, 1998, and which did not constitute certification as a "school psychologist." District records did not show that the Respondent had renewed her teaching certificate or had otherwise met the minimum job requirements for the school psychologist position.

5. The Auditor General recommended that the school district document its records with a basis upon which the individual, the Respondent, was determined to be qualified for the school psychologist position or to take appropriate action to provide for a licensed or certified school psychologist for administering testing and for assessing placement for exceptional students. As a result of receiving these communications and preliminary findings, the superintendent met with the Respondent and felt compelled to request her resignation.

6. Nancy Holder had been the school psychologist in the position that Ann Farrior assumed. Early in the 1998-1999 school year, Ms. Holder, who is a certified school psychologist, had been transferred to the position of "Staffing Specialist" upon which occurrence Ann Farrior then occupied the position of school psychologist. Ms. Holder, in her testimony, described the duties of school psychologist as including, in addition to performing intelligence testing of students, testing for academic achievement, and personality testing as well as counseling duties involving students, their parent, and teachers. The school psychologist must also participate in staffing meetings and in the IEP formulation process and resulting decisions regarding placement of exceptional students; she must assist classroom teachers and parents with the particular problems involving both exceptional students as well as students who do not have exceptionalities or diagnoses. Because of the above-referenced preliminary audit findings by the Department of Education, Ms. Holder was required to assume the additional responsibility of supervising Ms. Farrior's activities for the remainder of her annual contract year as well as undertaking to re-test those students whom Ms. Farrior had previously tested. The school district alternatively obtained a consultant to perform the educational testing that otherwise would have been done by Ms. Farrior as school psychologist had she been qualified under the pertinent regulations to do so.

7. The school district received a statement from the Department of Education's Bureau of Teacher Certification, dated March 22, 1999, concerning the Respondent's eligibility to apply for or to receive certification as a school psychologist. That statement of eligibility noted that the Respondent lacked 27-semester hours of graduate school credit in school psychology which would necessarily have to include six-semester hours of graduate credit in a supervised school psychology internship. Additionally, Ms. Farris would have to submit a passing score on the state-required teacher certification examination. Ms. Farris enrolled in an appropriate school psychology internship program for the 1999-2000 school year, but as of the date of the hearing in this case, she still lacked 24 of the required semester hours of graduate credit in school psychology and had not yet submitted a passing score on the Florida State Teacher Certification examination.

8. The Walton County School Board has a written policy adopted August 13, 1996, and in force at times pertinent hereto which authorizes the superintendent "to select and recommended non-certificated instructional personnel for appointment pursuant to Section 321.1725, Florida Statutes, and State Board of Education Rule 6A-1.0502, when special services are needed to deliver instruction." Section 228.041(9), Florida Statutes defines the term "instructional personnel" as including "school psychologists." There is no showing in the evidence of record,

however, that "special services" are needed to deliver instruction. That is, although the school psychologist position is statutorily deemed to be in the category of "instructional personnel" it does not involve the teaching of students. Rather the school psychologist position, which is the subject of this case, involves testing, evaluation, assessment, and assistance in the placement of exceptional students in appropriate courses of instruction. There was no showing that special services were needed to actually deliver instruction, as envisioned by the above-referenced written policy of the School Board concerning the appointment of non-certificated instructional personnel, such as Ms. Farrior. Given the above-referenced audit findings in relation to the controlling federal regulations referenced above and the Board's policy allowing employment of certificated personnel "out-of-field" only in cases where special services are needed to deliver instruction, it has not been demonstrated that the School Board realistically had an option, in the proper exercise of its discretionary authority, to hire Ms. Farrior "out-of-field" as a "school psychologist" based merely on her only certification, which was a temporary certificate authorizing the teaching of psychology (not certification as a school psychologist which is really a pupil support position). Moreover, the School Board's policy authorizes the employment of teachers for instruction in areas other than that for which they are certificated only in the absence of available qualified,



certified instructors. Although the school psychologist position at issue remains unfilled, there is no evidence to demonstrate why it is unfilled and no evidence of record to demonstrate that there are not qualified, certified personnel available to be hired as a school psychologist to fill that position.

9. When the superintendent recommended the Respondent for a second annual contract in April of 1999, he was already aware that she was not qualified to perform the duties of a school psychologist and that the District would have to contract with outside consultants or other qualified persons to at least secure the administration of intelligence and other psychological testing, which testing is a part of the job description and duties of a school psychologist. The then exceptional education director for the District, Ms. Rushing, had suggested to the superintendent that he recommend the Respondent in April of 1999 for the position of "evaluation specialist." This would more represent the actual duties Ms. Farrior had been performing after the Department of Education audit finding that she was not qualified to serve as a school psychologist. Unfortunately, however, there was no authorized position of "evaluation specialist" and the superintendent has no authority to set the qualifications for a particular position or to recommend a person for a position that had not otherwise been approved nor its qualifications approved of by the School Board.

10. In summary, as of the date of the hearing, the Respondent was not yet eligible to receive either a regular or temporary certificate from the Department of Education as a school psychologist and still lacked 24 semester hours of graduate credit necessary for such certification; she had not yet passed the Florida State Teacher Certification Examination for school psychologist although she had secured and enrolled in an appropriate internship to satisfy the above-referenced six-hour internship requirement.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

12. Section 230.23(5), Florida Statutes, provides in pertinent part as follows:

(5) Personnel. - Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of Chapter 231:

(a) Positions, qualifications, and appointments. - Act upon written recommendations submitted by the superintendent for positions to be filled and for minimum qualifications for personnel for the various positions and act upon written nominations of persons to fill such positions. The school board may reject for good cause any employee nominated. . . .

12. The school superintendent does not have authority to unilaterally prescribe the qualifications for a position or to

unilaterally modify the duties of a position. See Sinclair and Starling v. The School Board of Baker County, 354 So. 2d 916 (Fla. 1st DCA 1978).

13. The Petitioner Agency has the burden of proving by preponderance of the evidence that it has good cause to reject the nomination of the Respondent by the superintendent for the school psychologist position at issue. The term "good cause" as described in Section 230.23(5), Florida Statutes, was treated by the Second District Court of Appeal in the case of Spurlin v. School of Sarasota County, 520 So. 2d 294 (Fla. 2nd DCA 1988), wherein the court stated:

We are persuaded that the reference in Section 230.23(5) to the "criteria of Chapter 231" cannot mean that the absence of the statutorily prescribed grounds for suspension or terminations automatically qualifies the person for appointment; rather that language contemplates that the person recommended by the superintendent is qualified by skill and training and is "properly certificated" - conditions which must exist prior to reaching a question of whether good cause exists for declining to follow the superintendent's recommendation. 520 So. 2d 294, 297.

The court in that decision noted that the expression "professional disqualification" is the proper benchmark for addressing good cause to reject the superintendent's nomination. The court recognized the Board's ability to reject an applicant nominated by a superintendent as being broader than the mere statutory grounds for dismissal from employment or other disciplinary sanctions provided in Chapter 231, Florida Statutes.

Florida law requires persons occupying instructional and professional positions within the public schools to be certified by the Department of Education. See Section 231.02(1), Florida Statutes. One must in order to be eligible for appointment to any position in a district school system, in an instructional capacity, hold a certificate or license issued by the State Board of Education.

It is undisputed that the Respondent held only a temporary certificate in the area psychology. A regular or a temporary certificate issued by the Department in "psychology" only authorizes that person to teach psychology to students in a classroom. The position of school psychologist is different from the functions and duties authorized by a certificate for psychology and is not a classroom teaching position but rather a "pupil support" position. The temporary certificate in psychology would authorize a person to teach psychology during the validity of that certificate. Ms. Farrior possessed a second temporary certificate in psychology issued by the Department of Education which could only be renewed under certain conditions provided for in Section 231.17(6)(c), Florida Statutes.

14. It might be argued that in the instant situation the superintendent's nomination of Ms. Farrior might not even trigger the "good cause" standard for rejection of that nomination by the Board since Ms. Farrior is not "properly certificated" nor is she currently eligible to gain certification. Moreover the Board's

policy of allowing non-certificated instructional personnel to be appointed where "special services are needed to deliver instruction" as explained above is not applicable nor complied with, and there has been no showing that properly-certificated personnel for the school psychologist position are not available.

15. If it be assumed, however, that the superintendent had made a recommendation to the Board of one who by statute or rule or by the Board's policy could meet at least some of the requirements, functions, and duties of the school psychologist position, thus bringing into play the "good cause requirements" of Section 230.23(5), Florida Statutes, it has been shown that the Board acted within the proper exercise of its discretion. It had "good cause" to reject the nomination because Ms. Farrior was not actually professionally qualified to fill the position of school psychologist. Although the Board may in its discretion chose to weigh certain professional qualifications in order to allow her to complete an internship and work towards her certification, the Board had no obligation to do so. The Board has the authority to reject the nomination by the superintendent of a person not presently qualified and certified to perform all of the duties of the existing position of school psychologist whether one subjectively would agree with that decision or not.

RECOMMENDATION

Having considered the foregoing Findings of Fact, the evidence of record, the candor and demeanor of the witnesses and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the School Board of Walton County rejecting the nomination of Ann Farrior to serve in the position of school psychologist for the school year 1999-2000, because good cause for such action has been demonstrated by a preponderance of the evidence in the manner found and concluded above.

DONE AND ENTERED this 16th day of June, 2000, in Tallahassee, Leon County, Florida.

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P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of June, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.