

temporary teacher's certificate was denied and, consequently, her dismissal from employment as an elementary school teacher with the Palm Beach County School Board was proper.

PRELIMINARY STATEMENT

By letter of April 27, 1999, the Palm Beach County School Board (School Board) dismissed Respondent from her employment as a elementary school teacher, effective April 28, 1999, based on its conclusion that her application for a temporary teacher's certificate had been denied and, consequently, her termination was proper. Such letter did not provide notice or an opportunity to request a pre-termination hearing.

Subsequently, by letter of June 21, 1999, Respondent's counsel advised the School Board that Respondent denied there was any basis to support the action taken in the letter of termination, and demanded a hearing pursuant to Section 120.57(1), Florida Statutes, before the Division of Administrative Hearings. In response, the School Board filed an administrative complaint which formally sought Respondent's dismissal from employment, based on the denial of her application for a temporary teacher's certificate by the Commissioner of Education, and forwarded the matter to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct the hearing Respondent had

requested. The School Board's complaint was later amended, but its gravamen remained the same.

At hearing, the Petitioner (School Board) called Respondent and Marion Weil as witnesses, and Petitioner's Exhibits 1-7 were received into evidence. Respondent called no additional witnesses and offered no additional exhibits.

A transcript of the hearing was filed May 16, 1999, and the parties were accorded 10 days from that date to file proposed recommended orders. The parties elected to file such proposals and they have been duly considered.

FINDINGS OF FACT

1. On or about August 14, 1998, Respondent, Ramona Wright, received a Statement of Academic Eligibility (Statement of Eligibility) for elementary education (grades 1-6) from the Florida Department of Education. The Statement of Eligibility was valid until July 29, 2000, and (consistent with Rule 6A-4.004, Florida Administrative Code,) provided, as follows:

The State of Florida issues two types of certificates for full-time teaching, a nonrenewable Temporary Certificate valid for two years and a Professional Certificate valid for five years . . . The Temporary Certificate is issued to allow time to complete requirements for the Professional Certificate.

Your application for teacher certification has been received and evaluated. Based upon current requirements, you will be eligible for a two-year nonrenewable Temporary

Certificate valid for two consecutive school fiscal years covering Elementary Education when:

You obtain employment with a Florida public, state supported, or nonpublic school which has an approved system for documenting the demonstration of required professional education competence. Your employer must request issuance of your certificate.

Your employer submits a fingerprint card which has been processed by the Florida Department of Law Enforcement and the Federal Bureau of Investigation. If your fingerprint report reflects an arrest record, your file will be referred to Professional Practices Services for further review. Issuance of your certificate will be contingent upon the results of this review

2. Given her eligibility, Respondent was employed by the Palm Beach County School Board (School Board) as an elementary school teacher on August 20, 1998, and, consistent with the provisions of her Statement of Eligibility, an application was submitted to the Florida Department of Education (Department of Education) for a temporary certificate. Pertinent to this case, the annual contract of employment under which Respondent was employed, provided as follows:

This contract is conditioned and based on the assertions by the Employee:

* * *

(2) That the Employee has completed the requirements and will be legally qualified to teach in the State of Florida upon issuance of a Florida teacher's certificate,

for which application has been duly made as evidenced by the official receipt and acknowledgment recorded in the office of the Superintendent, bearing Department of Education file number cited above. In the event that such application is denied, the Employee agrees that the School Board shall be relieved of all obligation under this provision.

3. By letter of April 1, 1999, Tom Gallagher, Commissioner of Education, Department of Education, advised Respondent that her application for a temporary teacher's certificate was denied. 1/ Specifically, the letter stated:

Dear Ms. Wright:

Your application for a Florida Teacher's Certificate has been carefully considered by the Department of Education and, for the reasons stated in the Notice of Reasons, your application is hereby DENIED pursuant to Section 231.17(5), Florida Statutes, which states in pertinent part:

"The Department of Education is authorized to deny an applicant a certificate if it possesses evidence satisfactory to it that the applicant has committed an act or acts or that a situation exists for which the Education Practices Commission would be authorized to revoke a teaching certificate."

You may appeal the certificate denial by following the Florida Administrative Procedures Act and Rule 6B-11.005 of the Florida Administrative Code. If you want to appeal the Department's decision, you have TWENTY (20) DAYS from the date this Notice of Denial is RECEIVED to fill in and FILE an Election of Rights Notice of Appeal with the Office of Professional Practices Services .

. . .
The reasons stated in the Notice of Reasons were as follows:

The Department of Education files and serves upon the Applicant, RAMONA BIANCA WRIGHT, its Notice of Reasons for its denial in accordance with the provisions of Section 120.60, Florida Statutes, and as grounds therefore, alleges:

On or about July 23, 1995, Applicant was involved in an altercation with a tenant of rental property owned by Applicant and her family. Applicant yelled at the tenant, struck a police officer and smashed some the tenant's dishes. Applicant then refused the request of the police to leave the area. Applicant was arrested and charged with Disorderly Conduct, Battery and Criminal Mischief. On or about October 10, 1996, Respondent pled Not Guilty to the charges. The court withheld adjudication to the charge of Disorderly Conduct, found Applicant Not Guilty of the Battery charge and Nolle Prosequi the remaining charge.

The Department of Education charges:

STATEMENT OF VIOLATIONS

COUNT 1: The applicant is in violation of Section 231.17(3)(c)6., Florida Statutes, which requires that the holder of a Florida Educator's Certificate be of good moral character.

COUNT 2: The applicant is in violation of Section 231.17(5)(a), Florida Statutes, which provides that the Department of Education is authorized to deny an Applicant an educator's certificate if it possesses evidence satisfactory to it that the Applicant has committed an act or acts or that a situation exists for which the Education Practices Commission would be authorized to revoke a teaching certificate.

COUNT 3: The Applicant is in violation of Section 231.28(1)(c), Florida Statutes, in that she has been guilty of gross immorality or an act involving moral turpitude.

WHEREFORE, the undersigned concludes that RAMONA BIANCA WRIGHT has committed an act or acts or that a situation exists for which the Education Practices Commission would be authorized to revoke an educator's certificate. It is therefore, respectfully recommended that the Education Practices Commission affirm the Department of Education's denial of the issuance of a teaching certificate to the Applicant based upon the reasons set forth herein, in accordance with the Explanation of Rights form which is attached to and made a part of this Notice of Reasons.

Respondent timely filed an election of rights and requested a formal hearing of the Education Practices Commission to contest the Commissioner's decision to deny her application. Section 231.17(10), Florida Statutes.

4. On April 27, 1999, notwithstanding the pendency of Respondent's challenge to the Commissioner's decision and without inquiry of her regarding the status of that matter, the School Board advised Respondent that her employment was terminated. Specifically, the letter of termination stated:

Dear Ms. Wright:

Please be advised that the School District of Palm Beach County has received notification from the Florida Department of Education (DOE) that your application for a teaching certificate was denied pursuant to Section 231.17(5), Florida Statutes. As a

result, your last day of employment with the district is Wednesday, April 28, 1999. Until such time as there is a change in your certification status, you are ineligible for teaching as well as coaching assignments.

As you are aware, you have the right to appeal the DOE's decision to deny your application for certification, as outlined in the April 1st letter from the Commissioner of Education. Should you have questions or need clarification regarding the above matter, please contact me at (561) 434-8043. We regret such action is necessary and hope you are successful in your pursuit of other employment opportunities.

Consistent with the terms of the letter, Respondent's last day of employment was April 28, 1999, a number of weeks prior to the end of the school year and her contractual term of employment.

5. Respondent's administrative challenge to the Commissioner's decision to deny her application for a temporary certificate was resolved, as between Respondent and the Commissioner of Education, subject to the approval of the Education Practices Commission, by a Settlement Agreement dated September 10, 1999, wherein it was agreed, inter alia, that the Commissioner would issue Respondent the certificate she had applied for. (Petitioner's Exhibit 3) The agreement was subsequently approved by the Education Practices Commission in late October 1999, and Respondent was issued her teacher's certificate in November 1999.

CONCLUSIONS OF LAW

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

7. Pertinent to this case, Chapter 231, Florida Statutes, provides:

231.02 Qualifications of personnel.-

(1) To be eligible for appointment in any position in any district school system, a person shall be of good moral character; shall have attained the age of 18 years, if he or she is to be employed in an instructional capacity; and shall, when required by law, hold a certificate or license issued under rules of the State Board of Education

(2)(a) Instructional and noninstructional personnel who are hired to fill positions requiring direct contact with students in any district school system or laboratory school shall, upon employment, file a complete set of fingerprints taken by an authorized law enforcement officer or an employee of the school or district who is trained to take fingerprints. These fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. Such new employees shall be on probationary status pending fingerprint processing and determination of compliance with standards of good moral character. Employees found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed in any position requiring direct contact with students. 2/ Probationary employees terminated because of their criminal record shall have the right to appeal such decisions

231.15 Positions for which certificates required.-

(1) The State Board of Education shall classify school services, designate the certification subject areas, establish competencies, including the use of technology to enhance student learning, and certification requirements for all school-based personnel, and prescribe rules in accordance with which the professional, temporary, and part-time certificates shall be issued by the Department of Education to applicants who meet the standards prescribed by such rules for their class of service . . . Each person employed or occupying a position as school supervisor, principal, teacher, library media specialist, school counselor, athletic coach, or other position in which the employee serves in an instructional capacity, in any public school of any district of this state shall hold the certificate required by law and by rules of the state board in fulfilling the requirements of the law for the type of service rendered

231.17 Official statements of eligibility and certificates granted on application to those meeting prescribed requirements.-

(1) APPLICATION.-Each person seeking certification pursuant to this chapter shall submit a completed application to the Department of Education Pursuant to s. 120.60, the Department of Education shall issue within 90 calendar days after the stamped receipted date of the completed application an official statement of eligibility for certification or a certificate covering the classification, level, and area for which the applicant is deemed qualified.

(2) STATEMENT OF ELIGIBILITY.-The statement of eligibility must advise the applicant of the qualifications that must be completed to qualify for the temporary or

professional certificate sought. Each statement of eligibility is valid for 2 years after its date of issuance and may be reissued for one additional 2-year period if application is made while the initial statement of eligibility is valid or within 1 year after the initial statement expires.

(3) TEMPORARY CERTIFICATE.-

(a) The department shall issue a temporary certificate to any applicant who submits satisfactory evidence of possessing the qualifications for such a certificate as prescribed by this chapter and by rules of the state board. Each temporary certificate is valid for 2 years after the date of its issuance and is nonrenewable, except as otherwise provided in subsection (6)

* * *

(10) DENIAL OF CERTIFICATE.-

(a) The Department of Education may deny an applicant a certificate if the department possesses evidence satisfactory to it that the applicant has committed an act or acts, or that a situation exists, for which the Education Practices Commission would be authorized to revoke a teaching certificate.

(b) The decision of the Department of Education is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of the notice of denial.

8. Also pertinent to this case are the rules of the State Board of Education relating to temporary certificates. Among other things, the rule requires, as a condition of issuance of a temporary certificate, that the applicant provide "verification of full-time employment in a Florida public . . . school which

has an approved Florida provisional orientation program." Rule 6A-4.004(2), Florida Administrative Code.

9. Based on her Statement of Eligibility, the School Board employed Respondent as an elementary school teacher, and she taught while her application for a temporary certificate was pending; however, the contract of employment expressly provided that "[i]n the event that such application is denied, the Employee [Respondent] agrees that the School Board shall be relieved of all obligation under this [agreement; and Respondent's employment may be terminated]". Respondent's employment was consistent with the Statement of Eligibility she received from the Department of Education, the provisions of Rule 6A-4.004(2), Florida Administrative Code, and the School Board's accepted practice, 3/ and the terms of the contract regarding termination were clear and unambiguous.

10. Here, the School Board contends it was authorized to terminate Respondent's employment (under the terms of the annual contract) when the Commissioner of Education, by letter of April 1, 1999, denied her application for temporary certification. Respondent is of the opinion that, given her timely challenge of the Commissioner's decision, there was no change in the status of her application; it remained pending and not denied. Consequently, until the matter was formally resolved, Respondent contends the School Board could not, based

on a claim that her application was denied, terminate her employment. Respondent's position has merit.

11. Section 120.60(3), Florida Statutes, provides that an agency, such as the Department of Education, must provide notice of its licensure decision, as follows:

(3) Each applicant shall be given written notice either personally or by mail that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act . . . Each notice shall inform the recipient of the basis for the agency decision, shall inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, shall indicate the procedure which must be followed, and shall state the applicable time limits

12. Consistent with the mandate of Section 120.60(3), Florida Statutes, the Department of Education gave Respondent notice of her right to seek review of its decision, and Respondent exercised that right. Consequently, until resolved consistent with the Administrative Procedures Act, the Department of Education's decision could, at best, be described as proposed. See Department of Health and Rehabilitative Services v. Barr, 359 So. 2d 503 (Fla. 1st DCA 1978)(The essence of chapter 120 proceedings is to give a person whose substantial interests have been determined by an agency action, an

opportunity to attack the agency's position by appropriate means, subject to judicial review under section 120.68, Florida Statutes.) See also Groves Watkins Constructors vs. Department of Transportation, 511 So. 2d 323 (Fla. 1st DCA 1987)(One of the proper purposes for a section 120.57 proceeding is to allow persons affected by intended decisions of state agencies to change the agency's mind.) Consequently, the School Board improvidently terminated Respondent's employment on April 28, 1999.

RECOMMENDATION

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

RECOMMENDED that a final order be entered consistent with the foregoing Findings of Fact and Conclusions of Law, and which accords Respondent all benefits due under her annual contract of employment that was wrongfully terminated.

DONE AND ENTERED this 2nd day of June, 2000, in Tallahassee, Leon County, Florida.

WILLIAM J. KENDRICK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of June, 2000.

ENDNOTES

1/ There is no explanation of record for the inordinate time the Department of Education took to consider Respondent's application.

2/ Respondent was not convicted of any crime and there was no statutory mandate against her continued employment in a position requiring direct contact with students.

3/ At hearing, the School Board offered proof that, historically, the School Board had thirteen individuals with similar circumstances as Respondent and in each instance the person's employment with the School Board was terminated from the moment the School Board was notified that the educator's certificate was denied regardless of whether an appeal (request for formal hearing) had been filed. Such testimony clearly speaks to the acceptability of the manner in which Respondent was employed (pending certification). As for the School Board's practice of terminating employment regardless of the pendency of a challenge to the denial of certification, it can only be said, for reasons that follow, that the School Board has been consistently wrong.

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.