

PRELIMINARY STATEMENT

The School Board seeks to terminate Respondent's professional service contract of employment as a classroom teacher. The Notice of Specific Charges, filed January 10, 2001, alleged the following grounds for termination of Respondent's employment:

Count I: "Immorality", as defined by the State Board of Education's Rule 6B-4.009(4), Florida Administrative Code;[¹]

Count II: "Conviction of a Crime Involving Moral Turpitude, Upon Such Conviction"; and

Count III: "Violation of School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties" [of School Board Employees].

A brief discussion of the motions filed before, during, and after the final hearing is warranted. This dispute was referred to the Division of Administrative Hearings on December 14, 2000. On December 28, 2000, the matter was scheduled for hearing on February 9 and 10, 2001. On January 11, 2001, the School Board's unopposed motion to continue the proceeding was granted and the matter was rescheduled for hearing on March 15 and 16, 2001. On February 26, 2001, Respondent moved to continue the matter on the grounds that she wished to obtain counsel or other qualified representative. On February 27, 2001, the undersigned entered an Order that denied Respondent's motion to continue, noting that the motion failed to establish that Respondent had made any efforts to secure counsel. On March 15, 2001, the

final hearing in this matter was convened. At the final hearing, Respondent moved, ore tenus, to continue the matter because she did not have an attorney. That motion was denied, but Respondent was permitted to submit for review by the undersigned certain correspondence between Respondent and United Teachers of Dade, the classroom teacher's union. Respondent requested the union to provide an attorney to represent her in this proceeding. The correspondence reflects that the union denied Respondent's request for legal representation on December 14, 2000, and notified her of that denial on December 15, 2000. On January 8, 2001, Respondent invoked the union's internal appeal process to challenge the union's denial of her request for counsel. Leslie Meek, an attorney for the union, notified Respondent on January 16, 2001, that her appeal was untimely and would not be processed. On March 8, 2001, a paralegal for the union advised Respondent that her request had been reviewed again on February 15, 2001, and denied. On or about March 26, 2001, attorney Leslie Holland filed a Notice of Appearance on behalf of Respondent and moved to re-open the final hearing. On April 2, 2001, that motion was heard by telephone conference call. During that conference call, the undersigned ordered Respondent's counsel to proffer the testimony she expected to produce if the hearing was reconvened and ordered Respondent to file an affidavit setting forth the

efforts she had made to timely secure counsel. Respondent's counsel filed her proffered testimony, but Respondent did not file an affidavit as ordered. On April 26, 2001, the undersigned entered an Order Denying Motion to Reopen Hearing, noting that the proffered evidence did not warrant the requested relief and that Respondent had failed to file the affidavit she had been ordered to file. On June 15, 2001, Respondent filed a pleading styled "Respondent's Notice of Filing Status of Criminal Case in Lieu of Proposed Recommended Order and Motion to Reopen the Hearing Based on New Evidence". On June 18, 2001, the School Board filed "Petitioner's Motion to Strike Respondent's Notice of Filing Status of Criminal Case in Lieu of Proposed Recommended Order and Response to Respondent's Motion to Reopen the Hearing Based on New Evidence." The attachment to Respondent's motion purported to reflect the disposition of criminal charges that had been filed against Respondent. Because the School Board did not present any evidence as to those criminal charges at the final hearing, that evidence does not warrant re-opening the final hearing. On July 27, 2001, the undersigned granted the motion to strike and denied the motion to re-open the final hearing.

At the final hearing, the School Board presented the testimony of Police Officer Joseph Calicchio, Police Officer Raul Gomez, John Gall, and Dr. Thomasina O'Donnell. At the

times pertinent to this proceeding, Officers Calicchio and Gomez were employed by the City of Miramar, Mr. Gall was a forensic chemist employed by the Broward County Sheriff's Office, and Dr. O'Donnell was employed by the School Board's Office of Professional Standards. The School Board's Exhibits 1-9 and 11-13 were admitted into evidence. Respondent offered no testimony and presented no exhibits.

A transcript of the proceedings was filed on April 2, 2001. The School Board filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order. Respondent did not file a Proposed Recommended Order.

FINDINGS OF FACT

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within the School District of Miami-Dade County, Florida. See Article IX, Florida Constitution, and Section 230.03, Florida Statutes.

2. At all times pertinent to this proceeding, the School Board employed Respondent as a classroom teacher pursuant to a professional service contract and assigned her to teach at Mae M. Walters Elementary School. Respondent began her employment with the School Board in 1993.

3. While on traffic detail on August 10, 2000, Officer Calicchio stopped a car with an expired tag. At the time pertinent to this proceeding the car, a convertible, had its top down. The driver, a male, and Respondent, the front seat passenger, were the only occupants of the car. After the car pulled off the road, Officer Calicchio parked his patrol car behind the stopped vehicle, approached the vehicle, and asked the driver for his license and registration. The driver responded that he did not have his driver's license on his person and gave his name and date of birth to Officer Calicchio. Respondent informed Officer Calicchio that the vehicle belonged to her and gave him her license and the car's registration.

4. Officer Calicchio returned to his patrol car to verify the information that had been given to him and to determine whether the driver had a valid license. While he was doing that, Officer Gomez appeared at the scene as backup for Officer Calicchio.

5. Officer Gomez observed marijuana particles on the driver's shirt and in the car. After Officer Gomez related his observations to Officer Calicchio, the two officers took the driver into custody and placed him in the backseat of Officer Calicchio's patrol car.

6. Officer Calicchio returned to the vehicle and observed marijuana particles in the vehicle. Officer Calicchio asked

Respondent if he could search the vehicle. She consented and got out of the vehicle. After he completed his search, Officer Calicchio asked Respondent if he could search the large purse she was carrying. She consented and began pulling objects out of the purse and placing them on the hood of Officer Calicchio's patrol car. When Respondent slid her purse back up on her arm, Officer Calicchio asked if her purse was empty. Respondent answered in the affirmative. Officer Calicchio asked if he could look inside her purse. Respondent responded by leaning the purse towards him so he could look inside. Officer Calicchio observed two yellow envelopes in the bottom of the purse. Respondent consented to Officer Calicchio retrieving the two envelopes and opening them. The envelopes contained a green, leafy substance.

7. When Officer Calicchio showed Respondent the contents of the envelope and asked what the substance was, Respondent fled on foot. Officer Calicchio, immediately followed by Officer Gomez, pursued Respondent. As she was fleeing, both officers observed Respondent reach into the front of her pants and pull out a plastic bag. As she was attempting to throw the bag into some bushes, Respondent slipped and fell to the ground. The plastic bag fell to the ground, landing next to the Respondent. The two officers recovered the bag and took Respondent into custody.

8. The plastic bag contained a white-yellowish substance that Officer Calicchio field-tested using a Valtox field test. The substance tested positive for cocaine.

9. Officer Calicchio also performed a field test on the green, leafy substance that was taken from the envelopes in Respondent's purse. The substance tested positive for cannabis.

10. Subsequent tests by John Gall, a forensic chemist employed by the Broward County Sheriff's Officer, confirmed that the substance in the plastic bag was cocaine. The cocaine taken from the plastic bag weighed 35.2 grams.

11. Respondent's conduct was sufficiently notorious to bring both Respondent and the educational profession into public disgrace or disrespect. Respondent's misconduct impaired her service in the community.

12. On December 13, 2000, the School Board voted to suspend Respondent's employment and begin proceedings to terminate her employment.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

14. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of

the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

15. The School Board has the burden of proving the allegations in the Notice of Specific Charges by a preponderance of the evidence. Allen v. School Board of Dade County, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. School Board of Lake County, 569 So. 2d 883 (Fla. 3d DCA 1990).

16. Prior to her suspension, Respondent was employed by the School Board pursuant to a professional service contract. Section 231.36, Florida Statutes (1999), provides in pertinent part:

(1)(a) Each person employed as a member of the instructional staff in any district school system . . . shall be entitled to and shall receive a written contract as specified in chapter 230. All such contracts . . . shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

* * *

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a). . . .

17. The definition of just cause set forth in Section 231.36(1)(a), Florida Statutes, is not all-inclusive. Engaging in immoral conduct as defined by Rule 6B-4.009(2), Florida Administrative Code, can constitute just cause for the termination of a professional service contract, as can conduct that fails to meet standards of conduct established by School Board Rule 6Gx13-4A-1.21. The context of the violation(s) must be considered in determining whether just cause exists.

"Whether a particular action constitutes a violation of a rule . . . 'is a factual question to be decided in the context of the alleged violation.'" McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995)(quoting Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995)).

18. In Count I of the Notice of Specific Charges, the School Board charged Respondent with "immorality," as defined by Rule 6B-4.009(2), Florida Administrative Code, a rule duly adopted by the State Board of Education, which provides as follows:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

19. The School Board established by the requisite evidentiary standard that Respondent's possession of cannabis and over 35 grams of cocaine, together with her attempted flight, constituted immoral acts within the meaning of Rule 6B-4.009(2), Florida Administrative Code, as alleged in Count I of the Notice of Specific Charges.

20. There was no evidence that Respondent had been convicted of a crime involving moral turpitude. Consequently, Count II of the Notice of Specific Charges should be dismissed.

21. School Board Rule 6Gx13-4A-1.21 provides, in pertinent part, the following standards of conduct for School Board employees:

All persons employed by The School Board of Miami-Dade County, Florida, are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system. . . .

22. The School Board established by the requisite evidentiary standard that Respondent violated the standard of conduct required of School Board employees by School Board Rule 6Gx13-4A-1.21, as alleged in Count III of the Notice of Specific Charges.

23. Under the facts of this case, the violation found based on the allegations of Count I of the Notice of Specific

Charges constitutes just cause to terminate Respondent's professional service contract.

24. Under the facts of this case, the violation found based on the allegations of Count III of the Notice of Specific Charges constitutes just cause to terminate Respondent's professional service contract.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order that upholds the suspension of Respondent's employment and terminates her professional service contract.

DONE AND ENTERED this 22nd day of August, 2001, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of August, 2001.

ENDNOTES

^{1/} The Notice of Specific Charges correctly quoted the definition of "immorality" set forth in Rule 6B-4.009(2), Florida Administrative Code, but incorrectly cited the rule as being Rule 6B-4.009(4), Florida Administrative Code. That scrivener's error is harmless error.

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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.

¹ The Notice of Specific Charges correctly quoted the definition of "immorality" set forth in Rule 6B-4.009(2), Florida Administrative Code, but incorrectly cited the rule as being Rule 6B-4.009(4), Florida Administrative Code. That scrivener's error is be harmless error.