



PRELIMINARY STATEMENT

On May 16, 2001, the Petitioner, School Board of Miami-Dade County, Florida, took action to suspend without pay and to initiate dismissal proceedings against the Respondent, Lidia Ann Gonzalez. Following a timely request for hearing, this case was forwarded to the Division of Administrative Hearings for formal proceedings and the case was assigned to an Administrative Law Judge for hearing.

On June 30, 2001, the Petitioner served its Notice of Specific Charges. In its Notice of Specific Charges, the Petitioner raised four grounds for termination: (1) excessive absenteeism and abandonment of position; (2) deficient or non-performance of job responsibilities; (3) misconduct in office; and (4) violation of School Board Rule 6Gx13-4A-1.21 (prohibiting conduct unbecoming a School Board employee).

At the hearing, the Respondent admitted the allegations in paragraphs 1-4, 6-14, 16-17, 19, and 22 of the Notice of Specific Charges. The Petitioner presented the testimony of three witnesses: Randy Mazie, Susan Lilly, and Fred Conde. The Petitioner's Exhibits numbered 3 and 7-22 were offered and received in evidence. The Respondent testified on her own behalf, but did not call any additional witnesses. The Respondent's Exhibits numbered 1-2 were offered and received in evidence.

At the conclusion of the hearing, the parties requested and were granted, twenty days from the filing of the transcript within which to file their proposed recommended orders. The transcript was filed with the Division of Administrative Hearings on January 24, 2002.<sup>1</sup> Thereafter, both parties filed timely Proposed Recommended Orders containing proposed findings of fact and conclusions of law.<sup>2</sup>

#### FINDINGS OF FACT

1. At all times material hereto, the Respondent was employed by the Petitioner as a bus driver and was assigned to Central East Regional Transportation Center (Central East), which is within the school district of Miami-Dade County. The Respondent is a member of the American Federation of State, County, and Municipal Employees, Local 1184 (AFSCME) bargaining unit.

2. At all times material, Randy Mazie (Mazie) was the Director of Central East. Juan Perez was the Coordinator of Central East (reporting to Mazie), and Frank Hernandez and Florence Birch were Administrative Assistants (reporting to Perez and Mazie).

3. When a bus driver is absent without advance notice, it often has a substantial impact on the work site. Absenteeism of bus drivers causes delays on that particular route and typically puts stress on both students and school site employees.

4. On a number of occasions, Mazie personally had conversations with the Respondent about her poor attendance record and the consequences of her absenteeism. In addition, employees, including the Respondent, received training about attendance policies and procedures.

5. In March 2000, the Respondent was referred to the Employee Assistance Program. On April 28, 2000, the Petitioner received notification that the Respondent declined to participate in the Employee Assistance Program.

6. The Petitioner accommodated the Respondent by approving leaves of absence for the Respondent during the following time-frames: January 21, 1998, through April 1, 1998; April 2, 1998, through April 1, 1999; November 29, 1999, through January 2, 2000; January 3, 2000, through January 31, 2000; and February 25, 2000, through March 3, 2000.

7. On November 19, 1999, School Board administrators held a conference with the Respondent to address the Respondent's excessive absenteeism. At the conference the Respondent was advised that she had been absent a total of 52.5 days since April 1999, including 18 days of unauthorized absences. In addition, the Respondent was advised that continued absenteeism would result in a second conference. At the conference, the Respondent was asked if there were any mitigating circumstances for her absences. The Respondent did not provide any

explanation for her unauthorized absences. Shortly thereafter, the Respondent received a written summary of the conference.

8. On March 2, 2000, School Board administrators held a second conference with the Respondent to address the Respondent's continued excessive absenteeism. At the conference, the Respondent was advised that she had been absent without authorization for 6.5 days since the first conference. In addition, the Respondent was advised that she had been absent a total of 74 days during the past 12-month period, including 24.5 days of unauthorized absences. The Respondent was instructed that continued absenteeism would result in a third and final conference, which could result in termination of her employment. At the second conference, the Respondent was asked if there were any mitigating circumstances for her absences. The Respondent did not provide any explanation for her unauthorized absences. Shortly thereafter, the Respondent received a written summary of the second conference.

9. On May 31, 2000, School Board administrators sent a memorandum to the Respondent regarding the Respondent's continued absenteeism. In the memorandum, the Respondent was directed to report to duty daily, as all of her leave time had been exhausted. The Respondent refused to sign a copy of the memorandum.

10. Notwithstanding the above directive, the Respondent's excessive absenteeism continued. From November 30, 2000, to December 19, 2000, the Respondent was absent from work. On January 4, 2001, the Respondent presented the School Board Administrators with a medical document signed by the Respondent's physician purporting to excuse the Respondent from work from November 27, 2000, through January 3, 2001. On January 6, 2001, the School Board Administrators discovered that the Respondent's physician did not excuse the Respondent from work from November 27, 2000, through January 3, 2001, and that the medical document provided by the Respondent had been falsified.

11. On January 22, 2001, School Board administrators held a third conference with the Respondent to address the Respondent's continued excessive absenteeism and submission of fraudulent medical documentation. At the conference, the administrators advised the Respondent that she had been absent a total of 38 days during the past 12-month period. The Respondent was also informed that, since March 2000, she had been absent without authorization for 18 days.

12. At the conference, the Respondent was afforded an opportunity to refute the charges that she had submitted fraudulent medical documentation. Despite this opportunity, the Respondent did not refute the charges or provide an explanation.

Thereafter, the Respondent received a written summary of the conference; however, the Respondent refused to sign the summary.

13. On February 22, 2001, the Office of Professional Standards held a conference with the Respondent to address the Respondent's excessive absenteeism and submission of fraudulent medical documentation. At the conference, the Respondent was afforded an opportunity to refute the charges that she had submitted fraudulent medical documentation. Despite this opportunity, the Respondent did not refute the charges or provide an explanation. The Respondent received a written summary of the conference.

14. During the hearing, the Respondent testified that she went to the emergency room (but was not admitted to the hospital) during the time-frame from November 30, 2000, through December 19, 2000. The emergency room personnel told her to follow up with her physician. Notwithstanding these directions, the Respondent admitted that she failed to follow up with her physician. During the time-frame from November 30, 2000, through December 19, 2000, School Board administrators directed the Respondent to submit documents indicating that she was under medical care. Thereafter, the Respondent falsified the medical note.

15. The Respondent also generally testified during the hearing that she was undergoing counseling by a social worker

for stress related to her personal life. However, the Respondent never offered as evidence any records from the social worker, and Mazie testified that she never had a conversation with him about meeting with a social worker. Moreover, the Respondent admitted that the School Board Administrators authorized absences related to her daughter's pregnancy/illness, as well as housing problems she encountered during a storm. In addition, the Respondent conceded that the School Board never denied the Respondent a requested leave of absence.

16. Between April 1, 1999, and November 19, 1999, the Respondent was absent without authorization for 20.5 days. During that same time-frame, the Respondent was absent with authorization (and without pay) for 20 days.

17. Between November 19, 1999, and March 2, 2000, the Respondent was absent without authorization for 8.5 days.

18. Between March 3, 1999, and March 2, 2000, the Respondent was absent without authorization for 28.5 days. During that same time-frame, the Respondent was absent with authorization (and without pay) for 51 days.

19. Between January 23, 2000, and January 22, 2001, the Respondent was absent without authorization for 22 days. During that same time-frame, the Respondent was absent with authorization (and without pay) for 12 days.



20. Between March 3, 2000, and March 3, 2001, the Respondent was absent without authorization for 21 days. During that same time-frame, the Respondent was absent with authorization (and without pay) for 8 days.

21. Between November 30, 2000, and December 19, 2000, the Respondent was absent without authorization for 14 consecutive days.

22. Based on the Respondent's leave history records, she was absent without authorization, between March 3, 2000, and March 3, 2001, as follows: March 10, 2000 ( $\frac{1}{2}$  day); April 10, 2000 ( $\frac{1}{2}$  day); April 13, 2000 ( $\frac{1}{2}$  day); May 30, 2000 ( $\frac{1}{2}$  day); May 31, 2000 ( $\frac{1}{2}$  day); June 2, 2000 ( $\frac{1}{2}$  day); July 18, 2000 ( $\frac{1}{2}$  day); July 21, 2000 ( $\frac{1}{2}$  day); November 30, 2000 (1 day); December 1, 2000 (1 day); December 4, 2000 (1 day); December 5, 2000 (1 day); December 6, 2000 (1 day); December 7, 2000 (1 day); December 8, 2000 (1 day); December 11, 2000 (1 day); December 12, 2000 (1 day); December 13, 2000 (1 day); December 14, 2000 (1 day); December 15, 2000 (1 day); December 18, 2000 (1 day); December 19, 2000 (1 day); January 10, 2001 ( $\frac{1}{2}$  day); January 11, 2001 ( $\frac{1}{2}$  day); February 15, 2001 (1 day); February 22, 2001 ( $\frac{1}{2}$  day); and February 27, 2001 ( $\frac{1}{2}$  day).

23. As a result of the Respondent's conduct, School Board administrators recommended dismissal of the Respondent.

Thereafter, the Petitioner suspended the Respondent without pay and initiated these dismissal proceedings.

#### CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. See Sections 120.569, 120.57(1), and 231.29(3)(d)3.b, Florida Statutes (1999).

25. At all times pertinent to this proceeding, the Petitioner was a duly-constituted School Board charged with the duty to operate, control, and supervise all free public education within the school district of Miami-Dade County, Florida. See Section 4(b) of Article XI of the Constitution of the State of Florida, and Section 230.03, Florida Statutes.

26. The Petitioner has the burden of proving just cause by a preponderance of the evidence. See McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990). However, the burden of proving affirmative defenses falls on Respondent. See Department of Business & Professional Regulation v. Verzura, Case No. 98-3606 (DOAH 1999); Department of Environmental Regulation v. McSheehy, Case No. 91-7281 (DOAH 1993); see also Florida Dep't of Health and Rehab. Servs. v. Career Serv. Comm'n, 289 So. 2d 412, 414 (Fla. 4th DCA 1974) (holding that

burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal).

27. Section 230.23(5)(f), Florida Statutes (1999), provides, in pertinent part, that a school board may:

Suspend, dismiss, or return to annual contract members of the instructional staff and other school employees[.]

28. Section 231.001, Florida Statutes (1999), provides the School Board with the authority to issue policies relating to personnel matters and states that:

Except as otherwise provided by law or the State Constitution, district school boards are authorized to prescribe rules governing personnel matters, including the assignment of duties and responsibilities for all district employees.

29. Section 447.209, Florida Statutes, provides that it is the right of public employers to "direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or other legitimate reasons."

30. The Respondent is a non-probationary "educational support employee" within the meaning of Section 231.3605, Florida Statutes, which provides:

(1) As used in this section:

(a) "Educational support employee" means any person employed by a district school system who is employed as a teacher assistant, an education paraprofessional, a member of the transportation department, a member of the operations department, a member of the maintenance department, a

member of food service, a secretary, or a clerical employee, or any other person who by virtue of his or her position of employment is not required to be certified by the Department of Education or district school board pursuant to s. 231.1725. . . .

(b) "Employee" means any person employed as an educational support employee.

(c) "Superintendent" means the superintendent of schools or his or her designee.

(2)(a) Each educational support employee shall be employed on probationary status for a period to be determined through the appropriate collective bargaining agreement or by district school board rule in cases where a collective bargaining agreement does not exist.

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist . . .

(c) In the event a superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeals process shall be determined by the appropriate collective bargaining process or by district school board rule in the event there is no collective bargaining agreement.

31. The Respondent is a member of the AFCSME Local 1184. AFSCME and the Petitioner have entered into a Collective Bargaining Agreement (AFSCME Contract) that includes provisions for the discipline of its members.

32. Article II, section 3, of the AFSCME Contract provides:

It is understood and agreed that management possesses the sole right, duty, and responsibility for operation of the schools and that all management rights repose in it, but that such rights must be exercised consistently with the other provisions of this agreement. These rights include, but are not limited to, the following:

A. Discipline or discharge of any employee for just cause;

(Emphasis added.) Thus, the School Board has the right to discharge for just cause.

33. Article XI, Section 1, of the AFSCME Contract provides due process rights to employees, and states:

Progressive discipline steps should be followed, however, in administering discipline, the degree of discipline shall be reasonably related to the seriousness of the offense and the employee's record. Therefore, disciplinary steps may include:

1. Verbal warning;
2. Written warning (acknowledge);
3. Letter of reprimand;
4. Suspension/demotion; and
5. Dismissal.

(Emphasis added.)

34. Article XI, Section 1, of the AFSCME Contract further provides: "[I]t is agreed that disciplinary actions taken against AFCSME, Local 1184 bargaining unit members shall be consistent with the concept and practice of progressive or

corrective discipline and that in all instances the degree of discipline shall be reasonably related to the seriousness of the offense and the employee's record." (Emphasis added.)

35. Based on the foregoing language of Article XI of the AFSCME Contract, the employee's record must be considered in determining the degree of discipline. Furthermore, the disciplinary steps enumerated are permissive, not mandatory.

36. Article XI, Section 4, of the AFSCME Contract delineates the distinct types of separation: (A) voluntary; (B) excessive absenteeism/abandonment of position; (C) disciplinary; and (D) non-reappointment.

37. Article XI, Section 4B, of the AFSCME Contract, concerning excessive absenteeism/abandonment of position, provides, in pertinent part:

An unauthorized absence for three consecutive workdays shall be evidence of abandonment of position. Unauthorized absences totaling 10 or more workdays during the previous 12-month period shall be evidence of excessive absenteeism. Either of the foregoing shall constitute grounds for termination.

(Emphasis added.) The foregoing provision expressly provides that excessive absenteeism and abandonment of position alone constitute grounds for termination. Thus, the concept of progressive discipline does not apply to discharge for excessive absenteeism and abandonment of position.

38. School Board Rule 6Gx13-4E-1.01 provides, in pertinent part: "Except for sudden illness or emergency situations, any employee who is absent without prior approval shall be deemed to be willfully absent without leave."

39. Section 231.44, Florida Statutes, provides:

Any district school board employee who is willfully absent from duty without leave shall forfeit compensation for the time of such absence and his or her employment shall be subject to termination by the district school board.

40. The evidence in this case is sufficient to establish that the Respondent's conduct constitutes excessive absenteeism and abandonment of position. The Respondent's conduct constitutes just cause for her suspension and dismissal pursuant to Sections 230.03(2), 230.23(5)(f), 447.209, 231.3605, Florida Statutes, and Articles II and XI of the AFSCME Contract.

41. Article XI, Section 4C, of the AFSCME Contract, provides for the dissolution of the employment relationship between an employee and the School Board as follows:

C. Disciplinary - The employee is separated by the employer for disciplinary cause arising from the employee's performance or non-performance of job responsibilities. Such action occurs at any necessary point in time.

42. The evidence in this case is sufficient to establish that the Respondent's conduct constitutes deficient performance and/or non-performance of her job responsibilities. The

Respondent's conduct constitutes just cause for the Respondent's suspension and dismissal pursuant to Sections 230.03(2), 230.23(5)(f), 447.209, 231.3605, Florida Statutes, and Articles II and XI of the AFSCME Contract.

43. The evidence in this case is sufficient to establish that the Respondent tendered a falsified medical note to the Petitioner in order to obtain authorization for her absence from the workplace. The Respondent's conduct in this regard constitutes misconduct in office, and, accordingly, constitutes just cause for Respondent's suspension and dismissal pursuant to Sections 230.03(2), 230.23(5)(f), 447.209, 231.3605, Florida Statutes, and Articles II and XI of the AFSCME Contract.

44. School Board Rule 6Gx13-4A-1.21, provides in relevant part:

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.

Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited. (Emphasis added.)

45. The Respondent's conduct of submitting falsified records and being excessively absent from the workplace, constitutes conduct which failed to bring credit upon herself or



the school system and is thereby conduct that is not in conformance with School Board Rule 6Gx13-4A-1.21. Such actions fall within the definition of "unseemly conduct" or "conduct unbecoming," and, accordingly, constitute just cause for Respondent's suspension and dismissal from employment pursuant to Sections 230.03(2), 230.23(5)(f), 447.209, 231.3605, Florida Statutes, and Articles II and XI of the AFSCME Contract.

46. Finally, the Respondent argued as an affirmative defense that she was receiving counseling from a social worker related to stress. This affirmative defense is insufficient to excuse the Respondent from the consequences of her absences and other misconduct. See Palm Beach County School Board v. Auerbach, Case No. 96-3683, paragraph 32 (DOAH 1997) (recommending upholding dismissal for excessive absenteeism, notwithstanding employee's argument that his absences were caused by stress, anxiety attacks, headaches, and lower back pain).

#### RECOMMENDATION

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered terminating the Respondent's employment and denying all other relief sought by the Respondent.

DONE AND ENTERED this 28th day of March, 2002, in  
Tallahassee, Leon County, Florida.

---

MICHAEL M. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of March, 2002.

ENDNOTES

1/ The court reporter did not explain why it took ninety days to prepare the transcript in this case.

2/ The parties' Proposed Recommended Orders have been carefully considered during the preparation of this Recommended Order.

COPIES FURNISHED:

Manny Anon, Jr., Esquire  
AFSCME Council 79  
99 Northwest 183rd Street, Suite 224  
Miami, Florida 33128

John A. Greco, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

Merrett R. Stierheim, Superintendent  
Miami-Dade County School Board  
1450 Northeast Second Avenue  
Miami, Florida 33132

Honorable Charlie Crist  
Commissioner of Education  
Department of Education  
The Capitol, Plaza Level 08  
Tallahassee, Florida 32399-0400

James A. Robinson, General Counsel  
Department of Education  
The Capitol, Suite 1701  
Tallahassee, Florida 32399-0400

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.