

1-2-02

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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DIVISION OF
ADMINISTRATIVE
HEARINGS
TALLAHASSEE, FLORIDA
CSH-CWS

PINELLAS COUNTY SCHOOL BOARD

Petitioner

AP

DOAH CASE NO. 01-3317

vs.

REGINALD K. REESE

Respondent

FINAL ORDER

This matter having come before the School Board of Pinellas County, Florida, sitting as a quasi-judicial body, and the Board having reviewed the entire record consisting of Petitioner's Findings of Fact, Conclusions of Law and Supporting Memorandum, the Respondent's Findings of Fact, Conclusions of Law and Supporting Memorandum, the transcript of the hearing, the Administrative Law Judge's Recommended Order, and both Reginald Reese's and the Superintendent's Exceptions to the Recommended Order, and the Board having heard arguments of counsel, considered the recommendations of the Superintendent, and being otherwise advised in the premises, it is

ORDERED AND ADJUDGED, that the Administrative Law Judge's Recommended Order dated January 2, 2002, attached hereto as Exhibit "A" and incorporated herein, be adopted as this Board's Final Order, with the exception of the following:

1. The Administrative Law Judge determined in paragraph #33 that the School Board failed to establish "conviction of a crime involving moral turpitude" under section 231.36(4)(c), Florida Statutes, and Rule 6B-4.009(6), Fla. Admin. Code, because the evidence established that adjudication of guilt was withheld despite Mr. Reese's plea of no contest and the judge's withholding of adjudication.
2. The School Board finds that the Administrative Law Judge has misinterpreted section 231.36(4)(c), Florida Statutes, and Rule 6B-4.009(6), Fla. Admin. Code, because
 - a. Rule 6B-1.006(5)(m) that requires a certificate holder to:
Self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or Nolo Contendere for any criminal offense other than a minor traffic violation within 48 hours after the final judgment.
 - b. School Board Policy 8.25 clearly states that pleas of nolo contendere are what the Board considers to be a conviction of such a crime.

- c. Chapter 435 also considers pleas of nolo contendere as the basis for making employment decisions from criminal background checks, and
 - d. Rule 6B-4.009(6) places the focus on the “doing of the act itself and not its prohibition by statute.”
3. The School Board finds that it is as reasonable or more reasonable to interpret section 231.36(4)(c), Florida Statutes, and Rule 6B-4.009(6), Fla. Admin. Code to include pleas of no contest where adjudication was withheld as constituting “conviction” for purposes of determining whether there is conviction of a crime involving moral turpitude for the reasons set forth in paragraph 2.
4. Therefore, considering that Mr. Reese engaged in an act of moral turpitude, his admission to the act involved, and his plea of nolo contendere and the withholding of adjudication, it is as reasonable or a more reasonable conclusion of law to conclude that Mr. Reese was convicted of a crime involving moral turpitude, and this School Board finds that Mr. Reese was convicted of a crime involving moral turpitude.
5. Rule 6B-4.009(2), Florida Administrative Code, states

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.

The ALJ concluded in paragraph #s 34 and 35 that although the School Board had established the first two elements of this rule, that the conduct was inconsistent with the standards of public conscience and good morals, and that the conduct was sufficiently notorious, the School Board failed to prove that Mr. Reese’s service in the community was impaired.

6. The School Board finds that it is as reasonable or more reasonable to interpret Rule 6B-4.009(2) to consider for evidence of impaired effectiveness evidence such as that presented at the hearing that impaired service can be shown by testimony of administrators and others that this would affect a teacher as a role model and would cause teachers and administrators to have to address students’ questions and concerns with such conduct at an age where that should not have to occur.
7. Therefore, it is as reasonable or a more reasonable conclusion of law to conclude that Mr. Reese committed an act of immorality and this School Board finds that he committed an act of immorality.
8. The Exceptions filed on behalf of Mr. Reese are hereby rejected.
9. Respondent’s employment is hereby terminated.
10. Respondent is hereby notified of his right to appeal this Order to the Second District Court of Appeal by filing notice of the intent to do so upon the Clerk of the Court and the Clerk of the School Board within thirty (30) days of the date of this Order.

DONE AND ORDERED this 12th day of March, 2002.

THE SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA

By: _____

Lee Benjamin

Chairman

Attest: _____

Paul Hinesley

Ex-officio Secretary