

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,     )  
  )  
          Petitioner,                    )  
  )  
vs.                                        )     Case No. 01-3317  
  )  
REGINALD K. REESE,                    )  
  )  
          Respondent.                  )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice, a hearing was held on October 18, 2001, in Largo, Florida, before Carolyn S. Holifield, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner:   Jacqueline Spoto Bircher, Esquire  
  School Board of Pinellas County  
  301 Fourth Street, Southwest  
  Post Office Box 2942  
  Largo, Florida 33779-2942

For Respondent:   Mark Herdman, Esquire  
  Herdman & Sakellarides, P.A.  
  2595 Tampa Road, Suite J  
  Palm Harbor, Florida 34684

STATEMENT OF THE ISSUES

Whether Respondent's alleged conduct is a violation of Pinellas County School Board Policy 8.25 and/or Section 231.36,

Florida Statutes, and is just cause for his dismissal as a teacher in the Pinellas County School District.

PRELIMINARY STATEMENT

By letter dated July 18, 2001, Dr. J. Howard Hinesley, Superintendent of Pinellas County Schools, advised Respondent that he was recommending Respondent's dismissal as a teacher in the school district. According to the letter, the recommendation of dismissal was because, on November 10, 1999, Respondent engaged in conduct that violated School Board Policy 8.25 and Section 231.36, Florida Statutes. Respondent challenged the proposed dismissal and requested a formal hearing. On or about August 20, 2001, the matter was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the hearing and prepare a recommended order. By notice issued September 6, 2001, the matter was set for hearing and this proceeding followed.

In the Pre-Hearing Statement filed at the final hearing, the School Board clarified the issues in the case by stating that Respondent's "actions were a violation of School Board Policy 8.25(1)(a), (d) and (x) and 8.04, and also constitute just cause for his dismissal under Section 231.36 because, among other things, it constitutes immorality and conviction of a crime involving moral turpitude."

Prior to the evidentiary portion of the hearing, the parties agreed to address Respondent's Motion for Partial Summary Final Order, filed on October 5, 2001, in their post-hearing submittals in lieu of making argument at the hearing. After due consideration of the Respondent's Motion and the Memorandum of Law in support thereof, the Motion for Partial Summary Final Order was denied in an Order issued on December 31, 2001.

At hearing, Petitioner presented the testimony of the following witnesses: Brian Ward, a corporal with the Pinellas County Sheriff's Office; Jeannie Springer, an assistant principal at Riviera Middle School; J. Howard Hinesley, Ed.D., Superintendent of Pinellas County Schools; Arthur Harris, an assistant principal at Riviera Middle School; Albert Bennett, principal of Riviera Middle School; James M. Barker, administrator of the Office of Professional Standards, Pinellas County Schools; and Frank Wooten, president of the Parent-Teacher-Student Association of Riviera Middle School. Petitioner offered and had Exhibits 1 through 13 received into evidence.

Respondent testified on his own behalf and presented the testimony of the following witnesses: Faith Golson, Sue Greene, Jean Krasulski, and David Mason, all teachers at Riviera Middle School; Jade Moore, executive director of the Pinellas County

Classroom Teachers Association; Peggy Sanchez Mills and Peter Nolan, parents of former students of Respondent at Riviera Middle School; Betty Reese, Respondent's mother; Derek Reese, Respondent's brother; Gwendolyn Deloris Reese, Respondent's sister; and Terry Chisolm, Angela Rodriguez, Angela Peaton, and Dallas Manuel, II, all friends of Respondent and members of the Pinellas County community. Respondent offered and had Exhibits 1 and 2 received into evidence.

At the conclusion of the hearing, the parties agreed to file proposed recommended orders ten days from the date the Transcript was filed. The Transcript of the proceeding was filed on October 29, 2001. On November 11, 2001, the parties filed a Joint Motion for Enlargement of Time to Submit Proposed Findings of Fact, Conclusions of Law and Supporting Memorandum (Motion). The Motion was granted and the time for filing proposed recommended orders was extended to November 12, 2001. Both parties timely filed proposed findings of fact, conclusions of law, and argument under the extended time frame.

#### FINDINGS OF FACT

1. Respondent, Reginald K. Reese, is a teacher certified by the State of Florida, holding a professional service contract with Petitioner, the Pinellas County School Board (School Board). Respondent was employed as a substitute teacher by the School Board in August 1988. Respondent was hired as a full-

time teacher in the Pinellas County School System in August 1989, and has been a teacher in the district since that time. At all times relevant to this proceeding, he was employed as a teacher at Riviera Middle School.

2. Throughout his tenure with the School Board, Respondent's teaching career has been exemplary and he has consistently received good evaluations.

3. It is undisputed that Respondent is held in high regard and considered an excellent teacher by many parents of children he has taught and by his colleagues and administrators with whom he has worked.

4. Respondent is viewed by his former principal and current assistant principals as an excellent educator. His co-workers view him as an excellent teacher, the epitome of quality, a wonderful teacher, top-notch, one of the best, innovative, creative, compassionate with children, an inspiration to students, and one of the teachers students come back to the school to see. Two parents whose children were taught by Respondent several years ago believe that Respondent's work and effort as a teacher had turned their children around and made them responsible, productive adult members of society.

5. Prior to the recommended disciplinary action which is the subject of this proceeding, Respondent has never been the

subject of disciplinary action by the School Board or any of its administrators.

6. On Wednesday, November 10, 1999, at about 1:00 p.m., Respondent parked his vehicle at the entrance of the south trail near the mangrove area in the vicinity of 4th Street and 115th Avenue in St. Petersburg, Florida. Respondent then exited his vehicle and entered the south trail of the mangrove area.

7. It is undisputed that while in the mangrove area, Respondent engaged in a sexual activity, specifically oral sex and masturbation, with two other adults. The contact between Respondent and the other individuals was consensual and involved adults who were strangers to each other. This sexual activity was observed by Corporal Ward of the Pinellas County Sheriff's Office.

8. The mangrove area in which the incident occurred was not clearly visible from the street. However, the area is considered a public place and is next to a busy four-lane road. Moreover, within that vicinity, people engage in recreational activities, including sunbathing, fishing, and boating.

9. After the sexual activity had concluded, Respondent was arrested at the scene of the incident described in paragraph 7 by an officer with the Pinellas County Sheriff's Office who had observed the acts. As a result of the incident, Respondent was charged with committing an unnatural and lascivious act and

exposure of sexual organs. Respondent pled nolo contendere to exposure of sexual organs and an Order Withholding Adjudication of Guilt was entered on December 30, 1999. Further, an Order Withholding Adjudication of Guilt on a Plea of Nolo Contendere to the charge of unnatural and lascivious act was entered on December 30, 1999. An Order to Seal Criminal History Record was entered on January 4, 2001.

10. On the advice of counsel, Respondent did not report his arrest, the charges filed against him, or the orders entered resolving the criminal matters to School Board officials at or near the time they occurred.

11. Respondent reported his arrest in a letter dated June 10, 2001, to the School Board's Office of Professional Standards, when he applied for renewal of his teaching certificate.

12. Upon receipt of the June 10, 2001, notification of Respondent's arrest, the School Board investigated the matter. Following the investigation, on July 18, 2001, Respondent was notified in a certified letter that Dr. J. Howard Hinesley, Superintendent of Pinellas County Schools, would be recommending to the School Board that Respondent be dismissed from employment. The basis of the recommendation of dismissal is that the conduct engaged in by Respondent on November 10, 1999, violated Pinellas County School Board Policy 8.25 and the Code

of Ethics and the Principles of Conduct of the Education Profession in Florida. It was alleged that these violations constitute just cause for Respondent's dismissal pursuant to Section 231.36, Florida Statutes.

13. Dr. Hinesley's recommendation of dismissal is based on several factors. First, Dr. Hinesley believes that the conduct engaged in by Respondent on November 10, 1999, was immoral in that it took place in a public area. Second, Dr. Hinesley believes that dismissal of Respondent is warranted because Respondent's actions were inappropriate and embarrassed the school system and the school. Finally, Dr. Hinesley believes that the conduct engaged in by Respondent was inappropriate and impaired his effectiveness as a teacher in the Pinellas County School District.

14. Information regarding the subject incident has not been widely disseminated because the record was sealed by court-order. However, all of the witnesses testifying in support of Respondent were advised of the details of the incident. In light of this knowledge, teachers who have worked with Respondent, a former administrator who supervised Respondent, former students of Respondent, parents of Respondent's former students, and community members supported Respondent. While admitting that Respondent made a mistake or had a lapse in judgment, they believe that his exemplary teaching record and



dedication to students and to the profession will allow him to overcome the challenges that may arise if and when the incident becomes public. Many of them also believe that his service to the Pinellas County School District community will not be impaired.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. See Sections 120.569 and 120.57, Florida Statutes, and Subsection 231.36(6)(a)2., Florida Statutes.

16. The Superintendent of the Pinellas County School Board has the authority to make recommendations for dismissal regarding school employees pursuant to Subsection 230.33(7)(e), Florida Statutes.

17. The School Board has the authority to dismiss School Board employees pursuant to Subsection 230.23(5)(f), Florida Statutes.

18. The School Board seeks to dismiss Respondent from employment as a teacher in the Pinellas County School District. Accordingly, in this proceeding, the School Board has the burden of proof and must meet that burden by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990) and Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. DCA 1990).

19. Chapter 231, Florida Statutes, governs teacher contracts and teacher discipline. Subsection 231.02(1), Florida Statutes, provides that to be eligible for appointment in any position in any school district, "a person shall be of good moral character."

20. Respondent is employed by the School Board pursuant to a professional service contract. Section 231.36, Florida Statutes, 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). . . .

21. The definition of "just cause" set forth in Subsection 231.36(1)(a), Florida Statutes, is not all-inclusive. By defining just cause as "including, but not limited to, misconduct in office, incompetency, gross insubordination,

willful neglect of duty, or conviction of a crime involving moral turpitude," the Florida Legislature gave school boards discretion to determine what actions constitute just cause for suspension or dismissal. Carl B. Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2nd DCA 1994). Therefore, engaging in immoral conduct or conduct that comes within definition of just cause provided in Section 321.36, Florida Statutes, is not the sole basis upon which a school board may dismiss an employee. A school board may define by policy conduct that constitutes just cause for dismissal of an employee who has a professional service contract.

22. In this case, the School Board duly promulgated School Board Policy 8.25. That policy establishes conduct that may constitute just cause for dismissal of a teacher and, hence, termination of his or her professional service contract.

23. As a result of the conduct described in paragraph 7 above, it is alleged that Respondent violated School Board Policy 8.25, and the Code of Ethics and Principles of Professional Conduct of the Education Profession in Florida. It is alleged that these violations constitute just cause for his dismissal pursuant to Section 231.36, Florida Statutes. More specifically, the record in this case indicates that the School Board alleges that Respondent's conduct not only violates School

Board Policy 8.25, but also is immoral and is a conviction of a crime involving moral turpitude within the meaning of Rule 6B-4.009, Florida Administrative Code.

24. The terms "immorality" and "conviction of a crime involving moral turpitude" are defined in Rule 6B-4.009, Florida Administrative Code, as follows:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that is 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.

\* \* \*

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

25. School Board Policy 8.25 sets forth the disciplinary guidelines for School Board employees. An employee who commits one or more of the offenses enumerated in that policy is subject to imposition of a penalty within the range prescribed therein. Among the offenses listed in School Board Policy 8.25(1) and which constitute grounds for discipline under Section 231.36, Florida Statutes, are the following:

(a) Inappropriate sexual conduct, including but not limited to lewd and lascivious behavior, indecent exposure, solicitation of prostitution, sexual battery, possession or sale of pornography involving minors, sexual relations with a student

\* \* \*

(d) Committing or Conviction\* of a Criminal Act-Misdemeanor

\* \* \*

(x) Failure to Comply with School Board Policy, State Law, or Appropriate Contractual Agreement

\* \* \*

\*Conviction is defined as a finding of guilt, a plea of guilty, a plea of nolo contendere, or entering a Pre-Trial Intervention program, whether or not there is a formal adjudication of guilt.

26. School Board Policy 8.25(1) provides that mitigating circumstances may be considered in determining the disciplinary action to be taken only "when there is a range of penalties." In this case, the sole penalty for a substantiated charge of inappropriate sexual conduct, which includes lewd and lascivious behavior, is dismissal. The penalty range for the a substantiated charge of committing or conviction of a "criminal act-misdemeanor" is suspension to dismissal. Finally, the penalty range for a substantiated charge of failing to comply

with school board policy, state law, or appropriate contractual agreement is caution to dismissal.

27. The School Board established by the requisite evidentiary standard that Respondent violated School Board Policy 8.25(1)(a). The evidence presented at hearing clearly established that on one occasion, Respondent engaged in inappropriate sexual conduct within the meaning of School Board Policy 8.25(1)(a). It is undisputed that Respondent engaged in sexual activity with two other adults and exposed his sexual organs in a public place. For this conduct, Respondent was charged with and pled nolo contendere to committing an unnatural and lascivious act and exposure of sexual organs. School Board Policy 8.25 expressly provides that lewd and lascivious behavior is deemed "inappropriate sexual conduct." Moreover, the policy mandates that this sexual conduct will result in dismissal, the sole penalty prescribed by the duly promulgated policy.

28. The School Board met its burden and established that Respondent violated School Board Policy 8.25(1)(a). Therefore, consistent with that policy, the penalty for this violation is dismissal.

29. Under the facts of this case, the violation of School Board Policy 8.25(1)(a) constitutes just cause to dismiss Respondent from his teaching position with the Pinellas County School District.

30. The School Board established that Respondent violated School Board Policy 8.25(1)(x) by failing to timely report his arrest as required by School Board Policy 8.04(4) and Rule 6B-1.006(5)(m), Florida Administrative Code. School Board Policy 8.04 requires all employees to "notify their supervisors immediately" if they are arrested for any criminal offense. Rule 6B-1.006(5)(m), Florida Administrative Code, requires educators to "self-report any conviction, finding of guilt, withholding of adjudication . . . 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."

31. The evidence is undisputed that Respondent was arrested on November 10, 1999, and entered a plea of nolo contendere to the charges arising out of the subject incident on December 30, 1999. It is also undisputed that the orders withholding adjudication were entered December 30, 1999. Respondent acknowledged that he failed to report the required information to appropriate official within the time prescribed by School Board Policy 8.04 and Rule 6B-1.006(5)(m), Florida Administrative Code, in violation of School Board Policy 8.25(1)(x). The penalty for this violation is caution to dismissal.

32. The undisputed evidence established that Respondent committed the acts described in paragraph 7. These acts are criminal offenses classified as misdemeanors. Accordingly, the School Board met its burden and established that Respondent violated School Board Policy 8.25(1)(d) by committing misdemeanor criminal acts. The penalty range for a substantiated charge of committing a "criminal act-misdemeanor" is suspension to dismissal.

33. The School Board has failed to establish that Respondent was convicted of a crime involving moral turpitude within the meaning of Section 231.36, Florida Statutes, notwithstanding the School Board's definition of "conviction" as enunciated in School Board Policy 8.25. The evidence established that with respect to both criminal charges against Respondent, adjudication of guilt was withheld. Accordingly, there was no conviction of any crime.

34. The School Board failed to establish that Respondent's conduct described in paragraph 7 constituted immoral acts within the meaning of Rule 6B-4.009(2), Florida Administrative Code. In order to show that the conduct is immoral within the meaning of the rule, it must be established that the conduct (1) is inconsistent with the standards of public conscience and good morals; (2) is sufficiently notorious to bring the individual concerned or the education profession into public disgrace or



disrespect; and (3) impairs the individual's service in the community. See McKinney v. Castor, 667 S. 2d 387 (Fla. 1st DCA 1995). The School Board met its burden as to the first and second elements required to establish "immorality" within the meaning of Rule 6B-4.009(2), Florida Administrative Code, but failed to establish the third element.

35. With regard to the first element, it was established that the conduct engaged in by Respondent is inconsistent with the standards of public conscience and good morals. As to the second element, Respondent's conduct is sufficiently notorious to bring Respondent and/or the education profession into public disgrace or disrespect. With regard to the third element, many of Respondent's colleagues, former students and parents of his former students, and friends and community members testified at hearing and submitted letters of support for Respondent. These individuals believe that despite the subject incident, Respondent can overcome any challenge that may arise if and when the details of the incident become public. Moreover, these individuals believe that Respondent can contribute positively to the Pinellas County School District community. The School Board presented no contrary evidence to establish that Respondent's service in the community would be impaired as a result of his conduct. Having failed to establish each of the three elements required by Rule 6B-4.009(2), Florida Administrative Code, there

can be no finding that the conduct is immoral within the meaning of the rule.

36. The School Board has established that Respondent violated School Board Policy 8.25(1)(a), (d), and (x). Those violations constitute just cause for Respondent's dismissal as a teacher in the Pinellas County School District.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a Final Order that dismisses Respondent from his position as a teacher with the Pinellas County School District.

DONE AND ENTERED this 2nd day of January, 2002, in Tallahassee, Leon County, Florida.

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CAROLYN S. HOLIFIELD  
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

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Division of Administrative Hearings  
this 2nd day of January, 2002.

COPIES FURNISHED:

Mark Herdman, Esquire  
Herdman & Sakellarides, P.A.  
2595 Tampa Road, Suite J  
Palm Harbor, Florida 34684

Jacqueline Spoto Bircher, Esquire  
School Board of Pinellas County  
301 Fourth Street, Southwest  
Post Office Box 2942  
Largo, Florida 33779-2942

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

Dr. J. Howard Hinesley, Superintendent  
Pinellas County School Board  
301 Fourth Street, Southwest  
Largo, Florida 33770-3536

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 must be filed with the agency that will issue the Final Order in this case.