

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,     )  
  )  
      Petitioner,                        )  
  )  
vs.                                        )     Case No. 02-0974  
  )  
THADDEUS STARLING,                    )  
  )  
      Respondent.                        )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice, Fred L. Buckine, an Administrative Law Judge of the Division of Administrative Hearings, held a formal hearing in this case on May 17, 2002, in Largo, Florida.

APPEARANCES

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

For Respondent: Mark Herdman, Esquire  
Herdman & Sakellarides, P.A.  
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STATEMENT OF THE ISSUE

The issue is whether Respondent's employment with the Pinellas County School Board should be terminated for just cause for violations of Pinellas County School Board Policies 8.04(4) and 8.25(1)(a), (d), and (x).

PRELIMINARY STATEMENT

On January 25, 2002, Respondent was notified by letter from Dr. J. Howard Hinesley, Superintendent of Pinellas County School Board (the School Board), that he was being recommended for dismissal at the School Board meeting on February 12, 2002. On February 7, 2002, Respondent requested a formal administrative hearing pursuant to Section 120.57, Florida Statutes. On March 7, 2002, the matter was referred to the Division of Administrative Hearings. On March 19, 2002, a Notice of Hearing, scheduling the final hearing for May 2, 2002, and the Order of Pre-Hearing Instructions were entered. On April 24, 2002, Petitioner filed a Motion to Continue, and on April 29, 2002, an Order Granting the Continuance and Rescheduling the Hearing for May 17, 2002, was entered. On May 13, 2002, the Parties' Joint Pre-Hearing Stipulation was filed.

At the final hearing Petitioner presented the testimony of five witnesses: Detectives Christina Bentham and Jason Landrem, St. Petersburg Police Department; Dr. J. Howard Hinsley, Superintendent, Pinellas County Public Schools; Edward Baldwin, Principal, John Hopkins Middle School; and James Michael Baker, Office of Professional Standards for the Pinellas County School Board. Petitioner offered thirteen exhibits (P-1 through P-13), which were accepted in evidence. Respondent testified on his own behalf and offered the testimony of his wife, Lomia

Starling. Official Recognition was taken of Sections 120.569, 120.57, 231.36 and 796.07, Florida Statutes (2001).

A two-volume Transcript was filed on June 5, 2002, and on June 7, 2002, respectively. Respondent filed a Notice of Taking Deposition of David Perry, but the deposition was not introduced in evidence. On June 24, 2002, the Parties filed a Joint Motion for Enlargement of Time to file proposed recommended orders, and on June 25, 2002, an Order granting the motion was entered enlarging the time to July 7, 2002. Respondent and Petitioner, on July 2, and July 5, 2002, respectively, filed Proposed Recommended Orders with memoranda of law.

#### FINDINGS OF FACT

Based upon observation of the witnesses while testifying, their ability for accurate recall and the review of exhibits in evidence and pleadings contained in the file, the following relevant and material facts are found.

1. Petitioner, Pinellas County School Board, is the governing board of the Pinellas County School District. In 1995, the Board adopted School Board Policy 8.25 "Discipline of Employees."

2. Respondent, Thaddeus Starling (Starling), has been a teacher for 23 years with the last 17 of those years spent in Pinellas County as a full-time teacher. Starling has worked for the last three years as a physical education instructor at the

John Hopkins Middle School, located on 16th Street in St. Petersburg, Florida.

3. At all times relevant and material to these proceedings, Starling was employed pursuant to a professional services contract with the School Board pursuant to Section 231.36, Florida Statutes (2001).

4. Mr. James Baldwin, a principal for over 15 years and the current principal of John Hopkins Middle School, testified that he has personally known Starling for 15 to 16 years and has been his supervisor and principal for three years. As far as he knows, Starling has never done anything wrong to suggest that he was not a good man. He is good with the students and has received good annual evaluations. There is no evidence in the record to suggest that Starling has ever been disciplined by the School Board.

5. Starling has been with his wife 14 years and married to her for the last eight years. Their pastime over the years has been fishing in and around the St. Petersburg area. Starling and his wife regularly fish for mullet in and around the St. Petersburg area during September and October, when the mullet are running. Each day that fishing is planned, Starling calls his wife to identify the spot where they will fish, and she meets him at the identified spot with their fishing equipment.

6. On September 5, 2001, Starling left school driving a 1983 Camaro by pulling onto 16th Street going toward 22nd Avenue. He turned left onto 22nd Avenue to Third Street where he made a left turn. Located along Third Street is one of the several fishing locations where Starling and his wife regularly fished.

7. Third Street at 20th Avenue was under construction on September 5, 2002, and Starling had to detour off Third Street onto 20th Avenue. Starling followed 20th Avenue to the intersection of 20th Avenue and Fourth Street, which is controlled by posted stop signs facing the 20th Avenue traffic. Because it was raining hard, all the windows in his vehicle were rolled up when he stopped at the 20th Avenue and Fourth Street intersection.

8. In response to complaints made to the St. Petersburg Police Department, a prostitution decoy detail was dispatched to the area of 20th Avenue and Fourth Street on September 5, 2001. Sergeant Quandt, the ranking officer, was in charge of the detail consisting of Detective Christina Bentham, posing as the prostitute decoy, and Detective Landrem, who was an observer or "eyeballer" responsible for looking out for the safety of the female decoy.

9. The crime of solicitation for prostitution focuses on the conversation between the "John" (the person who initiates

conversation with the decoy for the purpose of sex in exchange for something of value) and the decoy prostitute. No consummation need occur. The crime is committed by the specific "words spoken" by the accused.

10. While on the decoy detail, Detective Bentham wore an electronic device that transmitted her voice to Detective Landrem, who was equipped with an electronic receiver. Detective Bentham was also wired with an electronic device that transmitted her voice and the voice(s) of persons speaking to her to Sergeant Quandt, who controlled the electronic receiving and recording device. The electronic communication devices enable the members of the prostitution detail to communicate among themselves. The electronic recording device is to record, as factual evidence, the solicitation for sex made by the "John" to the decoy prostitute.

11. On September 5, 2001, Sergeant Quandt had the electronic recording device in his vehicle. He is the only member of the prostitution decoy detail with personal knowledge of when the recording device was actually operating during this decoy detail, but was not called by the Board to give testimony.

12. After approximately four hours of waiting in the pouring-down rain at the intersection of 20th Avenue and Fourth Street, South, decoy Detective Bentham had not arrested anyone for soliciting her for prostitution. Sergeant Quandt drove up

to Detective Bentham and ordered her to "get in he was calling it off." By her admission, Detective Bentham steadfastly refused to enter Sergeant Quandt's vehicle and insisted she would stay out longer. Thereafter, Sergeant Quandt drove away to another location. Detective Bentham went to stand under a tree approximately 20 yards away from the intersection.

13. According to Starling, as he sat at the stop sign, waiting for traffic to clear for his turn onto Fourth Street, Detective Bentham came from the grass area, walked onto the sidewalk to the passenger side of his vehicle, and motioned for him to lower his passenger window. Detective Bentham yelled something to Starling that he did not understand, so he slightly rolled down the passenger window of his vehicle. According to Starling, he saw a lady out in the rain waving at his car, and he thought maybe she needed some help. Starling's testimony is plausible.

14. According to Detective Bentham, Starling yelled something to her through his rolled-up passenger window while at the stop sign. She did not understand what he was saying, prompting her to walk approximately 20 yards in the pouring-down rain to the passenger window of his car. This testimony is not credible.

15. Starling and Detective Bentham gave conflicting testimony about who initially said what to whom. According to

Starling, Detective Bentham's first statement to him was, "What can I do for you?" and he replied, "Well, nothing, I'm headed to the wall." According to Detective Bentham, her first statement to Starling was, "What are you looking for?" and he replied, "Head." Considering the totality of circumstances, Starling's habit of fishing, the planned fishing at the specific location, calling home to his wife to meet him, and the road construction in the area causing detours resulting in Starling's arrival in the rain at the intersection of 20th Avenue and Fourth Street, Starling's testimony are credited.

16. Detective Landrem was in a parked vehicle approximately 100 yards from Detective Bentham and had control of a radio that he testified "received" only the words spoken by Detective Bentham. According to Landrem, he could not and did not heard any incriminating statements allegedly made by Starling.

17. It is undisputed that the decoy prostitution detail, with electronic recording equipment in their control and on their person, failed to record the alleged incriminating statements during the conversation between Detective Bentham and Starling. Sergeant Quant, ranking police officer in charge of this detail, was not called by the School Board to testify.

18. According to Starling, when Detective Bentham began to speak with him, he said, "Wait a minute," and [I'm going]



"fishing," and rolled his window up with the intent of turning right onto Fourth Street. Moments before making his right turn, Starling, looking in his side view mirror, saw Detective Bentham step off the curb onto the road and walk to a white car that was directly behind his car when he was on Twentieth Avenue.

Unknown to Starling at that time, the white car was driven by a male, Mr. Perry, whom Detective Bentham arrested for solicitation for prostitution, again without recording that conversation.

19. After Starling turned onto Forth Street East driving without stopping toward Ninetieth Avenue, Starling was followed by Sergeant Quant, but was stopped by and arrested by a uniformed St. Petersburg Police Office and charged with solicitation for prostitution. Under Section 796.07, Florida Statutes, this criminal offense is a misdemeanor.

20. Starling obtained local counsel to represent him in the criminal proceeding. On November 20, 2001, Starling was advised by counsel that he would best be served by dropping his plea of not guilty and entering a plea of nolo contendere. Starling was advised that his fine would be the amount of his posted bond, and he would have to take a sexually transmitted disease test. Starling agreed with the understanding the agreement would be acceptable to the School Board.

21. The County Court of Pinellas County accepted Starling's plea of nolo contendere, withheld adjudication of guilt, and placed Starling on four months' probation that he successfully completed.

22. Starling was advised by his counsel that he did not have to report his arrest to the School Board until time for his professional service contract renewal in May of 2002.

23. In January of 2002, after Starling and a colleague saw a newspaper article about another School Board employee who was disciplined, in part, for failing to report an arrest and a withholding of adjudication, they found a policy manual and talked to a school administrator who advised them to report any such occurrence to the Office of Professional Standards. Thereafter, Starling reported the arrest to the School Board.

24. Starling failed to report his arrest to the Office of Professional Standards immediately after his release from jail on bond. Starling's failure to immediately report his arrest to the School Board was not an intentional violation of Policy but was, at worst, excusable neglect based upon the advice received from counsel.

25. Starling reported his arrest by the St. Petersburg Police Department, the charge of solicitation and the disposition by the court to the Office of Professional Standards on January 9, 2002. Starling's prolonged delay in reporting his

arrest to the Board is a violation of Pinellas County School Board Policies 8.04(4) and 8.25(1)(x).

26. By letter of January 25, 2002, as amended thereafter, the Office of Professional Standards, the School Board's attorney and the Pinellas County Sheriff's Office, Superintendent J. Howard Hinesley sent the following notice of suspension and dismissal letter to Starling:

January 25, 2002

Dear Mr. Starling:

This is to advise you that you were suspended with pay effective January 11, 2002, until the School Board meeting on February 12, 2002. The Board will meet at 1:00 p.m. in the conference hall of the Administrative Building located at the address on this letterhead. At that meeting, I shall recommend that the Board sustain your suspension and dismiss you. If the Board enters its Final Order at that meeting, the effective date of your dismissal will be February 13, 2002. My recommendation for dismissal is based on the fact that on September 5, 2001, you were arrested by St. Petersburg Police for solicitation for prostitution. On November 15, 2001, you pled nolo contendere to the charge. Your actions are violation of School Board Polices 8.04(4) and 8.25(1)(a),(v), and (x), the Code of Ethics and Principles of Professional Conduct of the Education Profession in Florida, and constitute just cause for your dismissal pursuant to Florida Statute 231.36.

You are entitled to a hearing regarding my recommendation. This hearing, if requested will be pursuant to Chapter 120, Florida Statutes. Your request for a hearing must

be submitted, in writing, to Staff Attorney, Jackie Spoto Bircher, no later than 4:30 p.m. on Monday, February 11, 2002. If you do not request a hearing, this failure constitutes an admission of the allegations made in this letter. Due to the nature of the charges against you, I will recommend that you be suspended without pay effective February 13, 2002, until the conclusion of the administrative hearing process, if you request such a hearing. If you have any questions regarding these procedures, you may contact the Staff Attorney's office at 588-6221. (Emphasis added.)

27. During the final hearing, counsel stipulated to an error in the above Notice in charging a violation of Pinellas County School Board Policy 8.25(1)(v). Counsel agreed that the charge should be violation of Pinellas County School Board Policy 8.25(1)(d). The stipulation amending the charge against Starling was accepted.

28. Dr. Hinesley testified that on those occasions when he considers his recommendation to discipline employees, he adheres to the following process: first, when an employee is alleged to have committed a criminal act involving solicitation of prostitution he listens to his Staff's version of whether or not there is any question of guilt in terms of whether this act actually occurred; and second, if in the opinion of Staff and of the people who investigated the incident, the criminal act did occur, he was limited by Board Policy to recommending dismissal

based on the penalty range contained in School Board policy 8.25(a).

29. With regard to this case, Dr. Hinesley testified that at the time Mr. Barker presented this case to him, he did not know whether Mr. Barker's investigation consisted of cross-examination of police officers or merely reading and relying upon reports, including police reports, provided by staff; he did not talk to the police officers nor did he talk to Starling. He had no knowledge of whether Mr. Barker or his staff questioned all the parties involved for purpose of determining whether, in fact, the alleged solicitation for prostitution had occurred. Dr. Hinesley affirmed that had his staff provided him with a report that Starling had not committed the alleged criminal act of solicitation for prostitution, his recommendation to the Board would not have been dismissal. Dr. Hinesley also agreed that should the result of this administrative proceeding conclude that the alleged solicitation for prostitution had not occurred, his recommendation of discipline less than dismissal is permissible under his understanding of Board's policy 8.25(1)(a). Based upon his authority and extensive experience in the Pinellas County Education system, I accept the opinions of Dr. Hinesley and find his testimony credible and conclusive regarding application of Pinellas County School Board's discipline policy.

30. Based on the Finding of Facts herein above, the School Board has failed to prove, by a preponderance of the evidence, that Starling solicited for prostitution decoy Detective Bentham, on September 5, 2001, as alleged in the School Board's Notice of a Recommendation of Dismissal dated January 25, 2002.

31. Based upon the foregone Findings of Fact, Starling has rebutted the presumption of guilt based on his plea of nolo contendere for solicitation of prostitution.

32. However, based upon the foregone Findings of Fact, the School Board has proven by a preponderance of evidence that Starling violated Subsections 8.04(4) and 8.25(1)(x) of the School Board's Policy for not timely reporting his September 5, 2001, arrest.

#### CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. Sections 120.569 and 120.57(1), and Subsection 231.36(6)(a)2, Florida Statutes (2001).

34. The School Board seeks to dismiss Respondent from employment as a teacher for violations of Pinellas County School Board Policies 8.04 and 8.25(1)(a), (d), and (x), the Code of Ethics and Principles of Professional Conduct of the Education Profession in Florida, which constitute just cause for

Respondent's dismissal pursuant to Section 231.36, Florida Statutes (2001).

35. The Pinellas County School Board, as Petitioner, has the burden of proof in this employee dismissal hearing, and the standard of proof is by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990); Accord, Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. 3rd DCA 1990).

36. Pinellas County School Board Policy 8.04(4), provides:

All employees are required to notify their supervisors immediately if they are arrested or given a Notice to Appear for any criminal offense, including driving under the influence (DUI) and other criminal traffic offenses and local ordinance violations punishable by any period of incarceration or charged in any way with such offenses. . . .

37. School Board Policies 8.25(1)(a), (d), and (x), provide:

(a) Inappropriate sexual conduct, including but not limited to lewd and lascivious behavior, indecent exposure, solicitation of prostitution, sexual batters, 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.

38. Subsections 231.36(1)(a) and (4)(c), Florida Statutes (2001), provide:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certificated pursuant to s. 231.17 or s. 231.1726 or employed pursuant to s. 231.1725 and shall be entitled to and shall receive a written contract as specified in chapter 230. All such contracts, except continuing contracts as specified in subsection (4), 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.

\* \* \*

(4)(c) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be suspended or dismissed at any time during the school year; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude, as these terms are defined by rule of the State Board of Education. Whenever such charges are made against any such employee of the



district school board, the district school board may suspend such person without pay; but, if the charges are not sustained, he or she shall be immediately reinstated, and his or her back salary shall be paid. In cases of suspension by the district school board or by the superintendent of schools, the district school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine to either dismiss the employee or fix the terms under which he or she may be reinstated. If such charges are sustained by a majority vote of the full membership of the district school board and such employee is discharged, his or her contract of employment shall be thereby canceled. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the district school board.

39. The Board has failed to establish by a preponderance of the evidence that Starling committed the act of soliciting prostitution from Detective Bentham on September 5, 2001. Thus, the Board has not established a violation of Pinellas County School Board Policy 8.25(1)(a).

40. The parties admit that Respondent was arrested and charged with soliciting for prostitution, a second-degree misdemeanor proscribed by Subsections 796.07(2)(e) and (f), Florida Statutes, and entered a plea of nolo contendere to that charge.

41. Respondent's arrest on the criminal charge of solicitation for prostitution and the entry of a plea of nolo

contendere to that charge constitutes the factual basis of the School Board's case for dismissal for a violation of Pinellas County School Board Policy 8.25(1)(d). The facts in Clark v. School Board of Lake County, Florida, 596 So. 2d 735 (Fla. 5th DCA 1992) are strikingly similar to the facts found in the instant case. In Clark the school teacher was charged with the misdemeanor of abuse of an aged or disabled person. The school teacher pled nolo contendere to the criminal misdemeanor charge, and the court withheld adjudication and placed the school teacher on probation. The school teacher fulfilled the conditions of probation and was released after completing probation. In Clark, the hearing officer in the administrative proceeding found that the acts of abuse had not occurred.

42. The Clark court held that the School Board erred in concluding, notwithstanding the hearing officer's findings of fact to the contrary, that Clark was guilty of immorality. The analysis there is applicable in this case.

43. The Clark court reasoned that a plea of nolo contendere the misdemeanor charge was not evidence of the commission of the criminal act in our system of justice. A plea of nolo contendere to a criminal charge is not conclusive grounds for dismissal. See Kinney v. Department of State, Division of Licensing, 501 So. 2d 129 (Fla. 5th DCA 1987); Ayala v.

Department of Professional Regulation, 478 So. 2d 1116 (Fla. 1st DCA 1985).

44. The School Board argues in its Proposed Recommended Order that its Policy 8.25(1)(d) proscribes employees from committing or being convicted of a misdemeanor. Starling did not commit the act of solicitation of prostitution. Thus, the issue becomes whether Starling should be dismissed for being convicted of a misdemeanor. Pinellas School Board Policy 8.25 defines "conviction" to include a plea of nolo contendere and the withholding of adjudication.

45. In Ayala, supra, the court held that the Board of Medical Examiners could consider a nolo contendere plea as a conviction, but had to afford the applicant the opportunity to rebut a presumption of guilt on the criminal charges by "explaining the reasons and circumstances surrounding his plea of nolo contendere, and thereby attempt to convince the Board he is not guilty of a crime in violation of the [statute]."

(Emphasis added.) Id. at 1118-1119.

46. Pursuant to Section 120.57(1), Florida Statutes, Respondent requested an administrative hearing, which is a de novo proceeding to resolve disputed facts underlying the criminal charge of solicitation for prostitution. This de novo proceeding afforded Starling an opportunity to rebut the presumption of guilt of the criminal charge. Respondent

established that he did not commit the act of solicitation for prostitution as charged.

47. The School Board established that Respondent technically violated Pinellas County School Board Policy 8.25(1)(x) by failing to timely report his arrest as required by Pinellas County School Board Policy 8.04(4). The evidence established that Respondent did act to report and did immediately report his arrest when he became aware of the policy through a newspaper article. The delay in reporting his arrest to the Board, albeit based upon incorrect advice of counsel, is a technical, non-intentional, violation of the policy. The penalty range for this violation is caution to dismissal.

48. Pursuant to School Board Policy 8.25(3) there are a number of factors to be considered when determining the appropriate penalty within a penalty range. In this case, there was no student involvement; no danger to the public; no repetitions of the offense; and no prior discipline. Respondent is a long-time, above-satisfactory evaluated employee of the School Board. He was not aware he was in violation of the policy, and when he did become aware, he immediately remedied the situation. All these factors mitigate the penalty to be imposed for this first-time minor policy violation.

RECOMMENDED ORDER

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

RECOMMENDED that the Pinellas County School Board enter a Final Order issuing a written reprimand to Respondent for his failure to immediately report his arrest, dismiss all other charges filed against Respondent, and reinstate Respondent to his position with back-pay and benefits.

DONE AND ENTERED this 23rd day of August 2002, in Tallahassee, Leon County, Florida.

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FRED L. BUCKINE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of August, 2002.

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.