

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL	)	
BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 02-3446
	)	
CHARLES J. BOLDWYN,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on February 4-5, 2003.

APPEARANCES

For Petitioner: Melinda L. McNichols  
Legal Counsel  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

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

STATEMENT OF THE ISSUE

The issue is whether Petitioner may terminate Respondent's teaching contract for just cause.

### PRELIMINARY STATEMENT

By letter dated August 22, 2002, Petitioner informed Respondent that it was initiating proceedings to dismiss him for just cause, including misconduct in office, gross insubordination, and violation of School Board Rule 6Gx13-4A-1.21, pursuant to Sections 230.03(2), 230.23(5)(f), 231.36, and 447.209, Florida Statutes. Respondent timely requested a hearing.

By Amended Notice of Specific Charges filed January 27, 2003, Petitioner alleged that it initially employed Respondent in August 1983, and he has engaged in repeated insubordinate, threatening, and violent behavior at work.

Petitioner alleged that, on October 31, 1990, the principal of Southwood Middle School held an emergency conference-for-the-record to discuss Respondent's noncompliance with administrative directives and refusal to present requested lesson plans during three attempts at formal observations. Petitioner alleged that, on October 23, 1991, Respondent required seven or eight black students to remain after class, at which time he made inappropriate and disparaging remarks to them. Petitioner alleged that, on October 31, 1991, the principal held another conference-for-the-record with Respondent to address his lack of judgment and future employment status with Petitioner.

Petitioner alleged that Respondent received an unacceptable evaluation following a classroom observation on October 5, 1998, while teaching at Miami Killian Senior High School. Petitioner alleged that, on October 21, 1998, the principal conducted a conference-for-the-record and issued Respondent a prescription for improvement, pursuant to the Teacher Assessment and Development System then in effect.

Petitioner alleged that, on October 16, 1998, Respondent verbally confronted the principal and threatened to punch him. Petitioner alleged that, following a conference-for-the-record about the October 16 incident, Respondent was required to undergo a medical-fitness evaluation. Petitioner alleged that, at this time, Respondent was directed not to visit the school campus and not to contact any staff or students. Petitioner alleged that it placed Respondent on alternative assignment at a region office from October 1998 through May 14, 1999. Petitioner alleged that, in May 1999, Respondent took a leave of absence following the results of a psychiatric examination that he was unfit to be a teacher.

Petitioner alleged that, on February 16, 1999, it conducted another conference-for-the-record to reconsider Respondent's fitness to return to his assigned duties and future employment status. Petitioner alleged that its representatives required a psychiatric reevaluation and directed Respondent not to contact

staff or students at Miami Killian Senior High School.

Petitioner alleged that Respondent repeatedly telephoned another science teacher from December 1, 1998, to June 1999, at which time he also contacted two students on several occasions.

Petitioner alleged that Respondent also contacted the chair of the science department at the school on or before August 12, 1999. Petitioner alleged that, on August 12, 1999, it conducted another conference-for-the-record, at which its representatives restated the no-contact directive.

Petitioner alleged that, on September 17, 1999, it conducted another conference-for-the-record, at which its representatives informed Respondent that he remained unfit to return to his assigned duties and restated the no-contact directive. Petitioner alleged that, on February 4, 2000, it conducted another conference-for-the-record for the same purposes.

Petitioner alleged that, on February 17, 2000, it assigned Respondent to Palmetto Middle School. Petitioner alleged that Respondent contacted another science teacher at Miami Killian regarding his former problems at the school.

Petitioner alleged that, on November 9, 2001, Respondent made inappropriate and disparaging comments to a group of students by referring to them as learning disabled. When the

exceptional student education chair confronted him, Respondent allegedly used threatening and abusive language toward her.

Petitioner alleged that, on December 5, 2001, a school administrator, following a classroom observation that she had conducted, informed Respondent that he did not meet standards in various categories. Petitioner alleged that Respondent verbally threatened her.

Petitioner alleged that, on March 20, 2002, it conducted a conference-for-the-record to cover the previously discussed matters. Petitioner alleged that its representatives told Respondent to refrain from verbally or physically threatening staff and students, refrain from demeaning students, refrain from contacting parties named in a pending investigation, and refrain from entering School Board property without permission from the region director.

Petitioner alleged that, on June 19, 2002, it took action to suspend and initiate dismissal proceedings against Respondent for just cause, including misconduct in office, gross insubordination, and violation of School Board rules.

Count I of the amended notice alleges that Respondent's repeated exhibition of threatening and improper conduct and chronic use of inappropriate and abusive language violate Rules 6B-1.001(2) and (3) and 6B-1.006(3)(a) and (e), Florida Administrative Code, and these violations are so serious as to

impair Respondent's effectiveness as a school teacher in the school system, so as to constitute misconduct in office, as defined in Rule 6B-4.009(3), Florida Administrative Code. Count I alleges that these acts constitute just cause for dismissal, pursuant to Sections 231.36(1)(a) and (6)(a), Florida Statutes, and Article XXI of the United Teachers of Dade contract.

Count II of the amended notice alleges that Respondent's willful neglect of duties and repeated refusal to obey direct orders constitute gross insubordination and willful neglect of duty, as defined in Rule 6B-4.009(4), Florida Administrative Code. Count II alleges that these acts constitute just cause for dismissal, pursuant to Sections 231.36(1)(a) and (6)(a), Florida Statutes, and Article XXI of the United Teachers of Dade contract.

Count III of the amended notice alleges that Respondent's repeated threats to administrators and coworkers and chronic use of disparaging and demeaning language constitute violations of School Board Rules 6Gx13-4A-1.21, 6Gx13-5D-1.07, and 6Gx13-4-1.08. Count III alleges that these acts constitute just cause for dismissal, pursuant to Sections 231.36(1)(a) and (6)(a), Florida Statutes.

Count IV of the amended notice alleges that Respondent's conduct constitutes conduct unbecoming a School Board employee, in violation of School Board Rule 6Gx13-4A-1.21. Count IV

alleges that this conduct is just cause for dismissal, pursuant to Sections 231.36(1)(a) and (6)(a), Florida Statutes, and Article XXI of the United Teachers of Dade contract.

At the hearing, Petitioner called fifteen witnesses and offered into evidence 19 exhibits: Petitioner Exhibits 1-16 and 18-20. Respondent called three witnesses and offered into evidence seven exhibits: Respondent Exhibits 1-7. All exhibits were admitted except Petitioner Exhibit 4, which was proffered.

The court reporter filed the transcript on April 14, 2003. Respondent filed his proposed recommended order on May 9, 2003. Petitioner filed its proposed recommend order on May 12, 2003. On April 22, 2003, the court reporter filed the transcript of the depositions of seven witnesses. These transcripts are admitted as late-filed exhibits.

#### FINDINGS OF FACT

1. Respondent has been a science teacher since 1974. After six and one-half years of service in the military, which included service in Vietnam, Respondent attended college and graduated from St. Louis University with bachelor's and master's degrees in chemistry.

2. After a short career in private industry, Respondent entered the teaching profession in Pennsylvania. In 1983, Respondent moved to Miami to continue teaching. For the first year, Respondent obtained a temporary position, filling in for a

teacher out on pregnancy leave, teaching honors physics and biology at Palmetto Senior High School. For the next three years, Respondent taught earth science and physical science at Palm Springs Junior High School, both as a permanent substitute and regular teacher. Starting in August 1987, Respondent taught unspecified science courses at North Dade Junior High School for a year.

3. Respondent's first extended assignment at one school was at Southwood Middle School, where he taught from August 1988 through June 1993. At Southwood Middle School, Respondent was a problem employee from the start; he was explosive, defiant, temperamental, and a bundle of nerves. From March 1989 through October 1991, different Southwood principals had to summon Respondent to the office for six conferences-for-the-record (CFR).

4. In October 1990, the principal at Southwood Middle School directed his assistant principal to schedule an observation of Respondent, who repeatedly deflected her request to schedule a mutually convenient time for an observation. On one occasion, Respondent lacked a lesson plan, but the principal, rather than placing Respondent on probation for that deficiency, instead conducted a CFR on October 31, 1990, at which he reminded Respondent of the requirement of lesson plans.



5. Eventually, the regional coordinator of the science department conducted the observation on November 26, 1990. The science coordinator assessed Respondent as deficient in preparation and planning, subject-matter knowledge, and instructional techniques. At a CFR on December 14, 1990, the principal prescribed appropriate remedies for these deficiencies. The CFR notes that Respondent claimed that the science coordinator had not judged him fairly.

6. Next, Respondent taught at North Miami Senior High School from August 1993 to June 1997. Having obtained certification in physics, Respondent taught physics to advanced placement, international baccalaureate, honors, and regular classes, as well as earth-space science.

7. During the 1997-98 school year and start of the 1998-99 school year, Respondent taught at Killian Senior High School. At Killian, he taught three physics and two chemistry classes.

8. In the late summer and early fall of 1998, district office personnel began painting the interior of Killian Senior High School. The smell of paint was oppressive to students and staff. Based on numerous complaints, as well as his own experience, the principal contacted the district office and asked that they monitor the odor. Respondent was among the persons complaining about the paint, but he was far from alone.

9. On October 5, 1998, unrelated to the paint situation, the principal conducted an observation of Respondent. The resulting evaluation notes numerous deficiencies in preparation (including the lack of a lesson plan), the delivery of instruction, and the management of the classroom. At the hearing, Respondent rejected the validity of this observation largely due to the principal's lack of background in science.

10. In the ensuing days, the principal tried without success to arrange a CFR to discuss the observation and evaluation, although the scheduling problems were not shown to have been due to Respondent. Finally, on October 16, 1998--a teacher workday--the principal directed his assistant principal to get with Respondent and schedule the CFR.

11. The assistant principal summoned Respondent to her office and asked Respondent to sign a notice of CFR setting a date for the conference. Respondent became very angry and called the principal, who is black, a "nigger." Respondent said the entire matter was a "bunch of bullshit." He then promised that he would see that the assistant principal "was taken care of" and "she would be sorry." The assistant principal replied that she only wanted him to sign the notice, but Respondent would not be mollified. In her 38 years in Petitioner's school system, the assistant principal has never seen an outburst like this from a teacher.

12. Shaken, the assistant principal immediately telephoned the principal, who was downtown at a school meeting. She relayed to him what had happened and all that Respondent had said. The principal responded by telling her that he would call Petitioner's police and return to the school immediately.

13. Arriving at the school, the principal met with several school police officers in his office. The officers wanted to arrest Respondent without delay, but the principal said that he wanted to speak to him first. The principal then walked up to the teacher's workroom where Respondent, alone, was working.

14. The accounts of what happened next do not overlap very much. The principal, a sizeable man, claims that Respondent hit him. Respondent, a small man with a sizeable temper, claims that the principal hit him. It is impossible to credit either story. The principal's testimony is inconsistent, and he was an evasive witness. As reflected throughout these findings, Respondent's distorted perceptions, disordered thinking, poor insight, and lack of candor deprive him of credibility. Likely, neither man struck the other, although they may have grabbed or jostled a little. Wisely, Petitioner did not pursue the matter in a manner consistent with a teacher battery upon a principal, nor does Petitioner allege in the present case that Respondent struck the principal. Clearly, though, the two men quarreled loudly, and, when the confrontation escalated into an

altercation, the school police entered the room and removed Respondent from the building.

15. Petitioner reassigned Respondent to a region office. On October 21, 1998, Petitioner conducted a CFR for the October 5 observation. This CFR listed various prescribed remedies, but recognized that Respondent's nonacademic placement prevented the accomplishment of most of them.

16. On December 10, 1998, Petitioner conducted a CFR for the October 16 incident. Petitioner presented Respondent with a list of physicians from whom he could choose, so that he could obtain a medical evaluation of his fitness to return to work. The letter memorializing the CFR directs Respondent not to visit the campus of Killian High School or contact any student or staff at the school by any means.

17. Undoubtedly, Respondent had reached a breaking point by the time of the October 16 incident. The primary source of his increasing anxiety seems to have been the paint situation. Eventually, the district office had to have its personnel remove the paint due to toxic substances contained in the paint, and it is not unlikely that Respondent played an important role in the process that led to the eventual removal of the unhealthy paint. However, it is impossible to determine exactly when Respondent obtained evidence of the paint's toxicity. At some point, although not immediately, Respondent obtained the material

safety data sheets for the paint and learned that the paint was unsuitable for a school. It is difficult to determine exactly when this occurred, and it is therefore difficult to assess Respondent's behavior. It appears likely, though, that, for a time at least, Respondent, fashioning himself a whistleblower beleaguered by the principal, bypassed normal administrative channels, proclaimed to his class that he would protect them from this toxic paint, and encouraged his students to have their parents complain about the paint.

18. The evidence is sketchy as to whether Respondent violated the directive not to contact students or staff. Respondent probably contacted teachers and possibly contacted students in violation of the directive, but, absent detailed evidence of the conversations, it is impossible to find that these conversations constituted material violations of the directive.

19. After some difficulties in selecting a psychiatrist acceptable to Respondent, he chose Dr. Anastasio Castiello from the names provided to him by Petitioner. Dr. Castiello conducted a psychiatric evaluation of Respondent on January 25, 1999. Based on a 50-minute interview and history largely supplied by Petitioner, Dr. Castiello diagnosed Respondent as suffering from a "moderately severe psychiatric disorder warranting a recommendation for relatively intensive psychiatric

treatment. The condition would also warrant the diagnosis of an involuntional disorder with intertwined elements of paranoid and the affective disorders."

20. Dr. Castiello conducted another 50-minute evaluation session with Respondent on August 16, 1999, and reached the same conclusions as he had in the previous session. On January 24, 2000, Dr. Castiello conducted a third and final evaluation session and concluded that Respondent was better and could return to teaching.

21. The two-and-one-quarter, single-spaced report of Dr. Castiello covering the last session casts little light on the means by which Respondent journeyed from a moderately severe psychiatric disorder warranting relatively intensive psychiatric treatment to sufficiently better to return to teaching. It is odd that, after Dr. Castiello opined that Respondent would need relatively intensive psychiatric treatment, Dr. Castiello never obtained the records of other psychiatric treatment, to which Respondent alluded, or discussed Respondent's assertion that the course of that treatment never required medication. For the most part, judging from Dr. Castiello's final report, he seems to have been impressed by Respondent's politeness and lack of pressured, frenzied speech, as well as vague assurances that Respondent had learned his lesson. Unless the lesson was not to pick up another moderately severe psychiatric disorder requiring

relatively intensive psychiatric treatment, Dr. Castiello's reasoning remains elusive.

22. Although it almost goes without saying that Dr. Castiello's diagnoses of severe illness and substantial recovery are entitled to no weight, he legitimately observed that his focus was on how Respondent responded to the paint problem, not on whether, eventually, Respondent was proved correct in his claims of toxicity.

23. In February 2000, Petitioner assigned Respondent to teach at Palmetto Middle School. Respondent enjoyed his new assignment, at least for awhile.

24. However, on November 3, 2001, the assistant principal, who had been a science teacher, conducted an observation of Respondent in his classroom. On December 5, 2001, the assistant principal met with Respondent and told him that she had found several deficiencies during the observation and offered him a professional growth team, which he declined. When she offered Respondent help, he told the assistant principal, who is black, that he had been beaten by a black administrator, and the matter was still in litigation.

25. From the start, the observation had been an unofficial observation, meaning that the results would not go into Respondent's personnel file. When the assistant principal informed Respondent of this fact and that she would return for

an official observation later, he angrily replied that, if he did not pass the next observation, the assistant principal would have a problem. He told her that he had been a Green Beret in the military and had a considerable background in science. Surprised by Respondent's response to a "freebie" observation, as she called it, and stunned by his threatening behavior, the assistant principal reasonably feared for her personal safety.

26. During November 2001, probably between the observation and meeting with the assistant principal described above, Respondent also had a confrontation with students and a teacher. A teacher across the hall from Respondent had been late returning from lunch, so the students for her next class were milling about in the hallway, waiting for her. Respondent confronted the students and, thinking they were exceptional student education (ESE) students, called them a "bunch of L[earning] D[isabled] students" and said that "LD students were always in trouble." When the students yelled back that they were not LD students, Respondent said, "You're all a bunch of LD losers."

27. As this exchange took place, the teacher who was the ESE department head was approaching the students and Respondent. Her first response was to turn to the students and tell them that LD students are not losers. As she did so, Respondent stood behind her, laughing. The ESE department head then



followed Respondent into his room and demanded to know why he was saying such things about ESE students and saying them to other students. Respondent denied saying anything and added that the matter was not any of her business. After a couple of inconsequential exchanges between the two teachers, Respondent warned the ESE department head that she should not be "messing" with him and that he has sued people. The ESE department head told him to do what he wanted to do and that she was going to file a grievance.

28. Twelve years ago, a science coordinator observed Respondent and found him deficient in preparation and planning, subject-matter knowledge, and instructional technique. Respondent's response was to say the science coordinator was unfair. Four years ago, a principal without a science background observed Respondent and found him deficient in preparing a lesson plan, classroom management, and instructional technique--two of the same areas identified in the assessment eight years earlier. Respondent's response was to fault the principal's lack of science background and, to his assistant principal, call the man a "nigger" and the observation "bullshit." Not satisfied, Respondent then threatened the assistant principal, who was merely trying to schedule a CFR. Still not satisfied, Respondent engaged in an altercation with the principal. Three years ago, an assistant principal with a

background in science observed Respondent and found several deficiencies. Even though he had been out of work for one year as medically unfit and even though the assistant principal had told him that the observation and evaluation would not go into his personnel file, Respondent's response was to tell her that, if he failed the next observation, she would have a problem. In the same month, Respondent gratuitously confronted students whom he thought to be in the ESE program, demeaned such students, laughed as a teacher tried to repair the damage that he had caused, and, when confronted privately by the teacher, told her to mind her own business and threatened her. This is misconduct in office, and this misconduct is so serious as to impair Respondent's effectiveness as a teacher in the school system.

#### CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

30. Section 231.36(1)(a) authorizes Petitioner to terminate Respondent's contract for "just cause," which includes "misconduct in office." It is necessary only to address this allegation.

31. Rule 6B-4.009(3) defines "misconduct in office" as any violation of Rule 6B-1.001 or 6B-1.006, which is so serious as to impair the individual's effectiveness in the school system.

32. Rules 6B-1.001(2) and (3) provide:

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

33. Petitioner has proved that Respondent is guilty of repeated instances of serious breaches of civility and professionalism, as Respondent has responded to numerous attempts to address his shortcomings as a teacher with threats, name-calling, and irrational behavior. Petitioner has thus proved that Respondent has violated Rules 6B-1.001(2) and (3), and Petitioner has just cause to dismiss Respondent.

#### RECOMMENDATION

It is

RECOMMENDED that the Miami-Dade County School Board enter a final order dismissing Respondent and terminating his contract.

DONE AND ENTERED this 13th day of May, 2003, in  
Tallahassee, Leon County, Florida.

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ROBERT E. MEALE  
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 13th day of May, 2003.

COPIES FURNISHED:

Merrett R. Stierheim,  
Interim Superintendent  
Miami-Dade County School Board  
1450 Northeast Second Avenue  
Number 912  
Miami, Florida 33130-1394

Honorable Jim Horne  
Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel  
Department of Education  
325 West Gaines Street  
1244 Turlington Building  
Tallahassee, Florida 32399-0400

Melinda L. McNichols  
Legal Counsel  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

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

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.