

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-4565  
 )  
 GLORIA P. ADAMS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 18, 2003, in Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Gloria P. Adams, pro se  
19511 Northwest 8th Avenue  
Miami, Florida 33169

STATEMENT OF THE ISSUES

Whether the Respondent, Gloria P. Adams, violated School Board rules regarding a drug-free workplace, and excessive absenteeism; whether she abandoned her position of employment; whether Respondent committed gross insubordination or willful

neglect of duty; and if so, whether such violation(s) support termination of Respondent's employment with the School District.

PRELIMINARY STATEMENT

On November 20, 2002, the Petitioner, School Board of Miami-Dade County, Florida (Petitioner, School Board or School District) took action to suspend and initiate dismissal proceedings against the Respondent, Gloria P. Adams. The action was based on just cause determined from alleged violations of School Board rules. More specifically, the Petitioner claimed that the Respondent had committed gross insubordination, willful neglect of duties, and had violated the School District's policy on drug-free workplace. The Respondent timely contested the action.

The School Board forwarded the case to the Division of Administrative Hearings for formal proceedings on November 25, 2002. Thereafter the matter was promptly scheduled for final hearing.

At the hearing, the School Board presented testimony from Betty Major, Sharon Jackson, and Jose Garcia. The Petitioner's Exhibits 1-5 were offered and received in evidence. The Respondent attended the final hearing but offered no evidence in support of her case.

The transcript of the proceedings was filed on April 28, 2003. The Petitioner timely filed a Proposed Recommended Order that has been considered in the preparation of this order. The Respondent has not filed a Proposed Recommended Order.

#### FINDINGS OF FACT

1. At all times material to the allegations of this case, the Petitioner is the authority charged with the responsibility of operating, controlling, and supervising all public schools within the Miami-Dade County, Florida School District. As such, its duties also include the personnel decisions related to teachers employed by the School District.

2. At all times material to the allegations of this matter, the Petitioner employed the Respondent pursuant to a professional services contract. The Respondent was assigned to serve as a teacher at Jan Mann Opportunity School.

3. On December 21, 2001, the Respondent presented for work staggering (in fact she fell down) with a disheveled appearance. At that time Respondent spoke with slurred speech and used verbally aggressive words. Based upon her appearance and actions, together with what was perceived as a strong odor of alcohol, the Respondent's supervisor determined that she should complete a "reasonable suspicion form." The form is

designated when an employee is suspected of drug and/or alcohol use on school property.

4. Betty Major completed the form (Petitioner's Exhibit 1) and noted Respondent's unsteady gait as well as the other indicators of being under the influence. Moreover, the Respondent admitted she had been drinking alcohol the night before.

5. During the interview conducted by Ms. Major, the Respondent exhibited marked irritability and expressed anger. As a result, the Respondent was relieved of duty. The Respondent subsequently refused to submit to a drug and alcohol screening.

6. On January 10, 2002, the School Board's Office of Professional Standards held a conference-for-the-record (CFR) and informed the Respondent that the refusal to submit to drug and alcohol screening would be considered a positive test response. The details of the CFR are memorialized in Petitioner's Exhibit 2.

7. At the CFR the Respondent was also advised that she had excessive absences. Although the Respondent maintained she was physically ill and unable to attend school, documentation from a treating physician to support the number of absences has not been provided.

8. At the conclusion of the CFR, the Respondent was provided with a copy of the School Board rule regarding its policy for a drug-free workplace, a copy of the responsibilities and duties rule, and the code of ethics of the Education Profession in Florida. The CFR was concluded with an indication from Respondent that she would promptly address the issues raised therein.

9. As part of the CFR the Respondent was advised of her opportunity to obtain assistance through the Employees' Assistance Program (EAP). Among its functions the EAP counsels School Board employees with substance or drug abuse concerns. Alcohol is considered a "drug" under the drug-free workplace policy.

10. The Respondent initially agreed to complete the EAP requirements in order to return to the classroom.

11. She did not fully cooperate with or complete the program.

12. On April 15, 2002, a second CFR was conducted with the Respondent. This meeting again sought to address the Respondent's ability to return to duty and her noncompliance with the drug-free workplace policy.

13. At the second CFR the Respondent again expressed a willingness to complete the EAP and to obtain appropriate help for her on-going problems. The Respondent was directed to

comply with the recommendations made by the School District's EAP.

14. The Respondent continued to be apologetic for her past behaviors.

15. On August 13, 2002, a third CFR was held between the Respondent and the Office of Professional Standards. The agenda for that meeting was similar to the past CFRs. The Respondent had not complied with the EAP, had not explained the unauthorized excessive absences, and the issue of the presumptive positive response for the drug and alcohol screening still loomed large.

16. Again, as in the past, the Respondent apologized for not completing the EAP. Additionally, the number of leave without pay (unauthorized) absences had by that time grown to 77. The Respondent had also exhausted her sick/personal leave time.

17. The absences were directly attributable to the Respondent's failure to complete the EAP. Basically, the Respondent was unable to be cleared to return to the classroom until she completed the EAP. She failed to complete the EAP so the number of unauthorized absences continued to grow.

18. Eventually the Respondent was dropped from the EAP due to lack of participation. Her case was then closed.

19. The Petitioner gave the Respondent numerous opportunities to demonstrate she was fit to return to the classroom.

20. The Respondent did not offer any credible explanation for her actions. Regrettably, the Respondent demonstrated by her failure to comply with the EAP that she was unprepared to return to the classroom.

21. The Respondent did not request medical leave (with appropriate documentation from a physician) if her condition were due to a physical illness.

22. Moreover, the Respondent did not apply for any leave that might have protected her job. This lack of judgment in itself suggests the Respondent was impaired and therefore unable to perform her duties as a classroom teacher.

23. At the minimum, had Respondent attended the EAP she could have received counseling and assistance that might have protected her future employment with the School District.

#### CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57, Florida Statutes.

25. The Petitioner bears the burden of proof in this case to establish by a preponderance of the evidence the allegations against the Respondent. It has met that burden.

As will be further explained, the Petitioner has established just cause for the termination of the Respondent's employment.

26. "Just cause" is defined as misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude. See Section 231.36, Florida Statutes. At issue in this proceeding are misconduct in office and willful neglect of duty or gross insubordination.

27. The Petitioner adopted Rule 6Gx-13-4-1.05 that provides for a general policy of maintaining a drug-free workplace. The use of illegal or misuse of prescription drugs is prohibited. Additionally, the abuse of alcohol (essentially the allegation herein) is also not tolerated. Employees suspected and found to have violated the drug-free policy must demonstrate that they are fit to perform their classroom duties.

28. In this case the Respondent refused to submit to drug and alcohol screening. By rule she was presumed to have tested positive. Therefore she was required to demonstrate her fitness to return to the classroom. The Respondent was provided several opportunities to participate in and comply with the EAP. Despite being directed to do so, which was a reasonable directive, the Respondent failed or otherwise refused to complete the requirements of the EAP. Moreover,



the Respondent failed to demonstrate her fitness to return to the classroom by any other means.

29. Even without the presumption of the positive test that must be considered when the Respondent failed to take the drug and alcohol screening, it must also be concluded that the Respondent reported for work in an impaired state on December 21, 2001. All of the behaviors observed and noted on that date lead to the unavoidable conclusion that the Respondent had or has a problem such that she is not fit for classroom duty.

30. Presenting for work in an impaired condition due to drugs or alcohol constitutes misconduct in office.

31. Next, as the Respondent took no precautions to seek authorized leave through the EAP, it must be further concluded that the absences she racked up (a total of over 80) constitute excessive absenteeism. Being absent to this extent also constitutes misconduct in office. The Petitioner has adopted rules to provide its employees with authorized leave. The Respondent did nothing to avail herself of those provisions.

32. Finally, as the Respondent failed to follow the directives provided to her during the CFRs, it must be concluded such failure constitutes gross insubordination or willful neglect of duty. It was reasonable for the Petitioner

to seek the Respondent's compliance with the EAP and to present for work without undue absenteeism. It goes without saying that the School Board would want to retain a long-term and valued teacher (Respondent began employment in 1983). It is therefore regrettable that the Respondent's situation and poor judgment impaired her ability to comply with the directives. The Respondent has offered no credible explanation for her behavior. She has expressed remorse during the CFRs but taken no bona fide steps to assure compliance with the Petitioner's directives.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Miami-Dade County, Florida, enter a Final Order confirming the initial decision to suspend without pay and to terminate the employment of the Respondent based upon just cause as set forth above. It is further recommended that, should the Respondent complete an accepted program for substance abuse and demonstrate fitness for Duty, that the School Board consider re-employment of the Respondent.

DONE AND ENTERED this 30th day of May, 2003, in  
Tallahassee, Leon County, Florida.

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J. D. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of May, 2003.

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.