

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SCHOOL BOARD OF MIAMI-DADE COUNTY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 03-0216
	)	
DEBBIE DARLINGTON,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its designated Administrative Law Judge, Richard A. Hixson, held a final hearing in the above-styled case on July 10 and September 15, 2003, by video teleconference with the parties participating in Miami, Florida, and the Administrative Law Judge presiding in Tallahassee, Florida.

APPEARANCES

For Petitioner: Denise Wallace, Esquire  
Miami-Dade County Public Schools  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

For Respondent: Manny Anon, Jr., Esquire  
AFSCME Council 79  
99 Northwest 183rd Street, Suite 224  
North Miami, Florida 33169

STATEMENT OF THE ISSUES

The issues for determination in this matter are: 1) whether the Respondent committed the violations alleged in the Notice of

Specific Charges filed on March 5, 2003; and 2) if so, whether Respondent should be dismissed from her employment with the School Board of Miami-Dade County.

PRELIMINARY STATEMENT

By letter dated January 16, 2003, Petitioner, the School Board of Miami-Dade County (School Board) notified Respondent, Debbie T. Darlington, that the School Board at its meeting on January 15, 2003, had suspended her and initiated dismissal proceedings against her. Respondent filed a timely notice with the School Board contesting the School Board's action and requesting an administrative hearing. On January 24, 2003, the matter was referred to the Division of Administrative Hearings. Pursuant to the Order entered by the Administrative Law Judge, the School Board filed its Notice of Specific Charges on March 3, 2003.

The Notice of Specific Charges (Notice) alleged that while Respondent was employed as a food service manager for Liberty City Elementary School, she had taken food or supplies from the school cafeteria, and had allowed her husband to take food or supplies from the school cafeteria. The Notice set out three counts of violations as just cause for Respondent's dismissal from her employment: Count I, Conduct Unbecoming a School Board Employee; Count II, Non-Performance and Deficient Performance of

Duties; and, Count III, Violation of School Board Rule 6Gx13-4A-1.21 Regarding Employee Responsibilities and Duties.

The hearing was initially scheduled for March 28, 2003. Pursuant to the requests of the parties, the hearing was re-scheduled for July 10, 2003. Because the hearing was not completed at that time, an additional day of hearing was held on September 15, 2003. At the hearing, the Board presented the testimony of Linda Whye, Susan Keye, Samuel Woodside, Dorothy Paulk, Norman Santana, Penny Parham, Margaret Lloyd, Julio Miranda, and Barbara Moss. The Board also presented Petitioner's Exhibits 2, 3, 5, 6, 7, 8, 9, 10 and 11, which were received in evidence.

Respondent, Debbie T. Darlington, testified in her own behalf, and presented the testimony of her husband, Ernest Myles. Respondent also presented the deposition testimony of her mother-in-law, Charlie Mae Myles, which was filed without objection subsequent to conclusion of the hearing. Respondent also presented Respondent's Exhibits 1 (composite), 2 (composite), and 3, which were received in evidence.

A transcript of the hearing held on July 10, 2003, was filed on September 11, 2003. A transcript of the hearing held on September 15, 2003, was filed on October 20, 2003. The Board filed its Proposed Recommended Order on November 7, 2003. Respondent filed her Proposed Recommended Order on November 10,

2003. The parties' Proposed Recommended Orders have been considered in the rendering of this Recommended Order. All statutory references are to Florida Statutes (2002), unless otherwise indicated.

### FINDINGS OF FACT

#### The Parties

1. Petitioner, the School Board of Miami-Dade County (School Board), is responsible for operating, controlling, and supervising the free public schools in the Miami-Dade County school district and has the power to suspend and dismiss employees. Art. XI, § 4(b), Fla. Const; § 1001.32, Fla. Stat.

2. Respondent, Debbie T. Darlington, at all material times, was employed by the School Board. Respondent is a member of the American Federation of State, County, and Municipal Employees, Local 1184 (AFSCME), and covered by a collective bargaining agreement between the School Board and AFSCME (the Contract). Respondent is now, and at all material times was, married to Ernest Myles. Her mother-in-law is Charlie Mae Myles. Neither Ernest Myles nor Charlie Mae Myles is or was at any time employed by the School Board.

#### Respondent's Employment History with the School Board

3. Respondent was first employed by the School Board on December 4, 1981, as an associate educator at Westview Elementary School.

4. Respondent had a break in service from August 23, 1983 to November 1, 1993. Respondent then worked as a part-time food service worker at Westview Middle School from November 1, 1993 to January 12, 1995.

5. Respondent had another break in service from January 12, 1995 to August 27, 1997. From August 27, 1997 to March 19, 1999, Respondent worked as a part-time food service worker at North Miami Beach Senior High School. Beginning on March 20, 1999, Respondent worked as a part-time food service worker at Sabal Palm Elementary School. At some time thereafter, Respondent entered the Food Service Manager Training Program. As part of this training program, Respondent was required to serve in a variety of school settings, including elementary, middle and high schools.

6. In March of 2000, Respondent began her training rotation for elementary schools at Liberty City Elementary School (Liberty City). When Respondent first went to Liberty City, she was working in the capacity as a trainee in the Food Service Manager program. Respondent was under the supervision of Margaret Poole, who was then serving as the Food Service Manager for Liberty City. During Respondent's first week at Liberty City, Ms. Poole was injured on the job and did not return to Liberty City. Because Respondent was performing very well, Linda Whye, the principal at Liberty City requested that

Respondent stay as temporary Food Service Manager until the completion of the school year. Respondent finished her Food Service Manager program in July 2000.

7. After Respondent satisfactorily completed the 1999-2000 school year, Principal Whye hired Respondent to serve as the Food Service Manager at Liberty City. Respondent was assigned permanently to Liberty City as of October 19, 2000.

8. Respondent served as the Food Service Manager at Liberty City during the 2000-2001 and 2001-2002 school years. In that capacity, Respondent supervised eight to nine employees. Her job responsibilities included the fiscal management and operation of the food services program at Liberty City.

9. Until January of 2002, Respondent generally received satisfactory-to-excellent evaluations in the performance of her duties. Respondent was noted on occasion for failing to keep an accurate daily food record.

#### Reports of Improprieties

10. Sometime in January 2002, Principal Whye learned that Respondent had set off the school alarm system in the cafeteria. This incident occurred at a time after Respondent's regularly scheduled work hours.

11. About a week after the alarm system was set off by Respondent, Samuel Woodside the head custodian at Liberty City, contacted Principal Whye regarding a break-in at Liberty City

which occurred over the Martin Luther King holiday weekend. Because of the proximity in time to Respondent's setting off the alarm system, Principal Whye asked Woodside if he had noticed anything unusual going on at the cafeteria. Woodside responded that he had observed an increase in deliveries to the cafeteria, and that he had seen Respondent's husband, Ernest Myles, and Respondent's mother-in-law, Charlie Mae Myles, in the cafeteria workplace area on several occasions.

12. Principal Whye then contacted Penny Parham, former Food Service Director of Operations for Regions I, II and III, which Region III included Liberty City. Ms. Parham currently serves as the Administrative Director for the Miami-Dade Public Schools Food and Nutrition Department. Principal Whye asked Ms. Parham if she could determine whether food or supplies were missing from the cafeteria inventory at Liberty City. In response to Principal Whye's request, Ms. Parham prepared a comparison report from one school year to the next to determine whether the amounts of food and supplies consumed at Liberty City were substantially equal.

13. Ms. Parham's report, which was sent to Principal Whye on March 4, 2002, showed that in comparing the same period (September/October) at Liberty City in 2000 to 2001, there was a 23.6 percent increase in purchased food costs, and a 57.9 percent increase in cost of supplies, without any corresponding

increase in the student population at Liberty City. Ms. Parham also reported that when costs and revenues were balanced, the food service program at Liberty City showed a 438.7 percent negative change. Ms. Parham recommended that a more detailed audit be performed to account for these increases in food services at Liberty City.

14. Sometime in February 2002, after she had already contacted Ms. Parham, Principal Whye was contacted by Margaret Lloyd, an employee in the cafeteria who told her that some food and supplies from the cafeteria had been taken for use at the Martin Luther King parade. Principal Whye also received an anonymous note stating that she should watch what Respondent was doing in the cafeteria at Liberty City. Because the note was anonymous, Principal Whye took no specific action in regard to those allegations at that time. Margaret Lloyd later revealed that she was the author of the anonymous note.

15. On March 4, 2002, after receiving Ms. Parham's report, and in light of the concerns raised by statements of employees, Principal Whye requested that the Miami-Dade Schools Police Department (Department) conduct an investigation to determine whether food and supplies were being removed from the Liberty City cafeteria by the Respondent and her husband.

#### The Investigation



16. On March 6, 2002, the Department assigned the case to Detective Norman Santana to conduct a Preliminary Personnel Investigation.

17. On March 13, 2002, Detective Santana interviewed Principal Whye, Samuel Woodside, and Margaret Lloyd, each of whom provided written statements confirming their previous observations regarding improprieties at the Liberty City cafeteria.

18. Also on March 13, 2002, Detective Santana contacted Julio Miranda, District Director for Investigative Audits, to advise him of the ongoing personnel investigation. Mr. Miranda was already aware of the case and stated that he would conduct an audit investigation.

19. On March 14, 2002, Detective Santana interviewed Ms. Parham, who provided him with her report and a written statement confirming the results of her comparison review, as well as the profit and loss statement for Liberty City's food service program.

20. On March 28, 2002, Detective Santana interviewed Susan Keye, Assistant Principal at Liberty City. Ms. Keye provided a written statement regarding an incident in the fall of 2001, when Respondent reported to Principal Whye that a freezer had broken and food had spoiled; however, there was no

verification that a report of the freezer malfunctioning had been made, nor any work order showing repair of the freezer.

21. On April 24, 2002, Detective Santana met with Mr. Miranda who stated that through the audit investigative process, no investigative research was done.

22. Also on April 24, 2002, Detective Santana interviewed several cafeteria workers at Liberty City: Eric Curtis, Barbara Jackson, Mildred Bennett, and Dorothy Paulk. Each provided written statements. Ms. Jackson and Ms. Bennett stated that they did not observe Respondent remove any food or supplies from the Liberty City cafeteria. Mr. Curtis and Ms. Paulk each stated to Detective Santana that they had at various times observed Respondent and her husband and her mother-in-law remove items from the Liberty City cafeteria.

23. On June 7, 2002, Detective Santana filed Preliminary Personnel Investigation Report G14335. Incorporated in Detective Santana's report were the written statements of all the above-listed persons whom he interviewed, along with the profit and loss report prepared by Ms. Parham. The Preliminary Personnel Investigation Report G14335 concluded that a violation of School Board Rule 6Gx13-4A-1.21 by Respondent was substantiated.

### Post Investigation Proceedings

24. On September 26, 2002, a conference-for-the-record was conducted in order to address the findings against Respondent, set out in Preliminary Personnel Investigation Report G143335. In attendance at the conference-for-the-record were Frederic E. Conde, Executive Director; Essie S. Pace, Region Director, Region III Operations; Principal Whye; Herman Bain and Sonia Devoe, AFSCME representatives; and Respondent. The purpose of the conference for the record was to review the results of the investigation, the investigation's substantiation of Respondent's violation of School Board Rule 6Gx13-4A-1.21, and Respondent's future employment status with the School Board. At the conclusion of the conference for the record, Respondent was provided "the option of resignation, retirement and/or redirection" on or before November 8, 2002.

25. On December 19, 2002, the School Board Superintendent sent Respondent a letter recommending her dismissal from employment with the School Board.

26. On January 15, 2003, the School Board took action to suspend Respondent and initiate proceedings to dismiss her from employment. Respondent filed a timely notice contesting her dismissal.

Notice of Specific Charges

27. The essential factual allegations set forth in the Notice of Specific Charges as stated in paragraph 9 allege that "Respondent had removed food and supplies from the cafeteria and allowed her husband to remove food and supplies from the cafeteria for the Respondent's personal use." Three counts are set forth in the Notice of Specific Charges.

28. Count I alleges that "Respondent's removal of food and supplies from the worksite is considered conduct unbecoming a school employee, and constitutes just cause and a sufficient basis for Respondent's dismissal, pursuant to Articles II and XI, s. 4C of the AFSCME Contract, and pursuant to s. 1022.22(1)(f)(formerly s. 230.23(5)(f)),s. 1012.40 (formerly s.447.209, Fla. Stat. (2002))."

29. Count II alleges that "Respondent's removal of food and supplies from the work site for her own personal use is considered non-performance and deficient performance of duties and constitutes just cause and a sufficient basis for Respondent's dismissal, pursuant to Articles II and XI, s.4C of the AFSCME Contract, and pursuant to ss 1022(1)(f)(formerly s. 230.23(5)(f), s. 1012.40 (formerly s. 231.3605), and s. 447.209, Fla. Stat. (2002))."

30. Count III alleges that "Respondent's conduct, as set forth herein, constitutes conduct that failed to bring credit

upon herself or the school system and is thereby conduct that is not in compliance with School Board Rule 6Gx13-4A-1.21." School Board Rule 6Gx13-4A-1.21 provides in pertinent part, "All persons employed by the School Board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system."

31. The Notice of Specific Charges seeks that Respondent's dismissal be sustained and that her employment with the School Board be terminated.

Proof of Charges

32. During the 2001-2002 school year, Respondent's husband, Ernest Myles, regularly was observed on the Liberty City campus, and was specifically observed in the kitchen area of the cafeteria workplace. Mr. Myles was in the kitchen area of the cafeteria on a weekly basis, at least twice a week.

33. During the same time period, Respondent's mother-in-law, Charlie Mae Myles, was also regularly observed on the Liberty City campus, and specifically in the kitchen area of the cafeteria workplace. Mrs. Myles was not as frequently observed in the cafeteria as her son.

34. Neither Ernest Myles nor Charlie Mae Myles was authorized to be on the Liberty City campus.

35. Neither Ernest Myles nor Charlie Mae Myles was authorized to be in the Liberty City kitchen area of the cafeteria workplace.

36. Samuel Woodside, the head custodian at Liberty City, observed an increase in food and supplies being delivered to the cafeteria during the 2001-2002 school year, even though the number of students at the school had not increased.

Mr. Woodstock, when questioned about the cafeteria, reported this to Principal Whye, who then contacted Ms. Parham.

Mr. Woodside's observations were confirmed by Ms. Parham's comparative review contained in her profit and loss report filed with Principal Whye on March 4, 2002. The increases in food and supplies at Liberty City are not explained by transfer slips or other evidence showing that significant amounts of food and supplies were transferred out of Liberty City to other schools. Similarly, the increase in food and supplies at Liberty City is not explained by evidence of spoilage. Although Respondent told Principal Whye that the freezer had broken in the fall of 2001, there is no evidence of any repairs performed on the freezer to account for missing food due to spoilage.

37. Dorothy Paulk has worked for the School Board for more than 29 years. Ms. Paulk is affectionately known at Liberty City as "Miss Dot," and attends the same church as the Respondent. Respondent and Ms. Paulk had a good working

relationship. Ms. Paulk has no animosity toward Respondent and her testimony is deemed highly credible. Ms. Paulk observed Respondent remove items from the Liberty City cafeteria and spoke to Respondent regarding her taking items from the cafeteria prior to being interviewed by Detective Santana. Ms. Paulk also observed Respondent's husband remove some oil and other supplies from the Liberty City cafeteria. Ms. Paulk also stated that other employees, including herself, had removed items from the Liberty City cafeteria.

38. Margaret Lloyd worked in several capacities at the Liberty City cafeteria during the 2001-2002 school year. Ms. Lloyd saw Respondent's husband and mother-in-law in the kitchen area of the cafeteria on numerous occasions. Ms. Lloyd did not have a good working relationship with Respondent, and in March of 2002 was reassigned from the cafeteria to work as a teacher's aide in the Liberty City pre-school program. Ms. Lloyd no longer works for the School Board, and testified that she holds no animosity toward Respondent.

39. Ms. Lloyd observed Respondent and her husband, Ernest Myles, remove food and supply items from the Liberty City cafeteria including meats, fruits, food containers, and wrapping paper. Ms. Lloyd's testimony was consistent with her prior statements to Principal Whye, as well as her interview and handwritten statement provided to Detective Santana on March 14,

2002, and her typewritten statement of April 25, 2002, to the audit investigator, Mr. Miranda. Ms. Lloyd's testimony is deemed credible.

40. The value of the food and supply items removed from the Liberty City cafeteria during the 2001-2002 school year by the Respondent and her husband was not established.

Progressive Discipline

41. On February 7, 2002, Respondent received a written memorandum from Principal Whye referencing a verbal warning Respondent had received regarding Respondent's absenteeism for the pay period in February 2, 2001, and Respondent's falsification of attendance records more than one year earlier. The memorandum further admonished Respondent for failing to be on duty and not notifying Ms. Keye.

42. On March 7, 2002, Principal Whye issued a written memorandum from Principal Whye referencing a verbal warning Respondent had received for inappropriate behavior with Ms. Lloyd and another cafeteria worker.

43. Both of these warnings to Respondent occurred after Principal Whye was aware of the reported improprieties in the cafeteria.



CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569, 120.57(1), and 120.60(5), Fla. Stat.

45. Prior to her suspension, Darlington was employed as a Cafeteria Manager and assigned to Liberty City Elementary School.

46. Darlington is a member of the American Federation of State, County and Municipal Employees (AFCSME). AFCSME and the School Board have entered into a Collective Bargaining Agreement (AFCSME Contract), which includes provisions for the discipline of its members.

47. Article II, section 3, of the AFSCME Contract provides:

It is understood and agreed that management possesses the sole right, duty and responsibility for operation of the schools and that all management rights repose in it, but that such rights must be exercised consistently with the other provisions of the agreement. These rights include, but are not limited to, the following:

A. Discipline or discharge of any employee for just cause; . . . .

48. Article XI, section 1, of the AFSCME Contract provides for due process rights to employees and states:

Progressive discipline steps should be followed, however, in administering discipline, the degree of discipline shall be

reasonably related to the seriousness of the offense and the employees [sic] record. Therefore, disciplinary steps may include:

1. Verbal warning;
2. Written warning (acknowledge);
3. Letter of reprimand;
4. Suspension/demotion; and
5. Dismissal.

Moreover, Article XI, section 1, of the AFSCME Contract further provides: "[I]t is agreed that disciplinary action(s) taken against AFSCME, Local 1184 bargaining unit members shall be consistent with the concept and practice of progressive or corrective discipline and that in all instances the degree of discipline shall be reasonably related to the seriousness of the offense and the employee's record."

49. Pursuant to AFSCME Contract, Article XI, section 4C, an "employee is separated by the [School Board] for disciplinary cause arising from the employee's performance or non-performance of job responsibilities. Such action occurs at any necessary time."

50. The School Board has the burden of proving just cause to suspend and initiate dismissal proceedings against Darlington by a preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. 3d DCA 1990); Dileo v. School Board of Lake County, 569 So. 2d 883 (Fla. 3d DCA 1990).

51. Section 1012.22, Florida Statutes (2001), provides that a school board has the power to suspend and dismiss employees.

52. The AFSCME Contract, by its very terms, permits the School Board to take into consideration the employee's entire record in determining the degree of discipline to be imposed each time the occasion arises to consider the imposition of discipline. Miami Dade County School Board v. Nairn, Case No. 01-2483, 2002 WL 262613, \*5 (Fla. Div. Admin Hrgs. Feb. 25, 2002).

53. The School Board alleged three independent grounds for dismissing Darlington: (1) conduct unbecoming a School Board employee; (2) nonperformance and deficient performance of duties; and (3) violation of School Board Rules regarding employee responsibilities and duties.

54. The School Board alleges in the Notice of Specific Charges that Darlington violated School Board Rule 6Gx13-4A-1.21, which provides in pertinent part that

All persons employed by the School Board of Miami-Dade County, Florida, are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

Violation of this School Board Rule constitutes just cause to discipline Respondent's employment.

55. The School Board has established, by a preponderance of the evidence, that Respondent committed the acts alleged in the Notice of Specific Charges. Ms. Paulk and Ms. Lloyd provided credible evidence that Respondent and her husband removed food and supplies from the Liberty City cafeteria for their personal use. Although evidence was also presented regarding Respondent's mother-in-law, the Notice of Specific Charges did not contain allegations in that regard, and no conclusions are made in that respect. Mr. Woodside also provided credible corroborating testimony regarding the increase in supplies and food delivered to the cafeteria in comparison to deliveries made under the supervision of other cafeteria managers.

56. The School Board has demonstrated by a preponderance of evidence that Respondent's performance as Food Service Manager at Liberty City rises to a level of conduct unbecoming a School Board employee, deficient performance or nonperformance of job duties, and violation of School Board rules regarding employee responsibilities and duties in violation of School Board Rule 6Gx13-4A-1.21.

57. Respondent, however, is entitled to progressive discipline for these violations. Until February 7, 2002,

Respondent had no disciplinary history with the School Board. The verbal warnings issued by Principal Whye on February 7, 2002, and March 7, 2002, were for problems, one over a year old, and unrelated to the removal of food and supplies. Dismissal from employment is the most severe discipline permitted. In this case, the evidence shows Respondent took, and allowed her husband to take several items from the Liberty City cafeteria. The value of the items taken by the Respondent and her husband was not established, but consisted of items such as cooking oil, some paper supplies, fruit, and a canned ham. A review of Respondent's complete record indicates generally prior satisfactory to excellent performance. Although Respondent's conduct in this case is very serious, under the progressive discipline provisions cited above, suspension and demotion is appropriate.

#### RECOMMENDATION

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

RECOMMENDED that a final order sustaining the discipline of Debbie T. Darlington for just cause, and imposing a one-year suspension without pay and a demotion to food service worker.

DONE AND ENTERED this 24th day of November, 2003, in  
Tallahassee, Leon County, Florida.



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RICHARD A. HIXSON  
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Filed with the Clerk of the  
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this 24th day of November, 2003.

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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.