STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MONROE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 03-1133
	)	
SHARON FULLER,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 7, 2003, in Key West, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Gordon Rogers, Esquire
Muller, Mintz, Kornreich, Caldwell, Casey, Crosland & Bramnick, P.A.
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131

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

STATEMENT OF THE ISSUE

Whether Petitioner has grounds to terminate Respondent's professional service contract as a classroom teacher, as alleged in the Administrative Complaint dated February 28, 2003.

PRELIMINARY STATEMENT

At all times pertinent to this proceeding, Petitioner employed Respondent pursuant to a professional service contract as a middle school English teacher at the combined public middle school and high school facilities named Marathon Middle School (MMS) and Marathon High School (MHS), respectively, in Marathon, Florida. On or about January 17, 2003, Respondent was arrested and charged with the criminal offense of Driving Under the Influence of Alcohol, commonly referred to as DUI. On or about January 21, 2003, Petitioner suspended Respondent's employment with pay, pending an administrative investigation into her arrest.

On February 28, 2003, Petitioner filed an Administrative Complaint alleging facts pertaining to her arrest for DUI on January 17, 2003, and to her prior convictions of DUI in 1989 and 1993. Petitioner further alleged that Respondent had been reprimanded and placed on probation by the Florida Education Practices Commission (EPC) based on the 1993 DUI conviction. The Administrative Complaint alleged that Respondent failed to successfully complete that term of probation.

Based on the factual allegations, the Administrative Complaint alleged that just cause existed to terminate Respondent's employment because her conduct constituted the

following: gross immorality, an act (or acts) of moral turpitude, and misconduct in office.

On or about February 28, 2003, Respondent was notified in writing that the Superintendent of Schools, Michael J. Lannon, intended to recommend to the School Board at its meeting scheduled for March 11, 2003, that Respondent's suspension with pay be modified to a suspension without pay and that her professional service contract be terminated. On March 11, 2003, the School Board of Monroe County approved the Superintendent's recommendation and terminated Respondent's professional service contract, subject to her due process rights. Following the School Board's action, Respondent timely requested a formal administrative hearing. The matter was referred to the Division of Administrative Hearings and this proceeding followed.

At the final hearing, the parties offered three joint exhibits, each of which was accepted into evidence. Joint Exhibit one was the Code of Ethics for the Teaching Profession in Florida. Joint Exhibit Two was the deposition of Mr. Lannon and the exhibits to that deposition. Joint Exhibit Three was the deposition of Respondent and the exhibits to that deposition. In her deposition and in her responses to discovery, Respondent admitted the material facts that underpin this proceeding, but disputed that those facts constituted grounds to terminate her professional service contract.

Petitioner presented the testimony of Dr. Fred Colvard (principal of MMS and MHS during the school year 2002/2003), Mr. Lannon, Lynn D'Ascanio (a parent), Michelle DeSanctis (a parent), and Linda Hale (an English teacher at MMS). Petitioner offered three exhibits in addition to the joint exhibits, each of which was admitted into evidence.

Respondent called no witnesses to testify at the hearing and offered no exhibits, other than the joint exhibits.

A transcript of the proceedings was filed on August 25, 2003. The parties filed Proposed Recommended Orders, which have been considered by the undersigned in the preparation of this Recommended Order.

All statutory citations are to Florida Statutes (2002) unless otherwise indicated. All rule citations are to the Florida Administrative Code as of the date of this Recommended Order, unless otherwise indicated.

FINDINGS OF FACT

1. The School Board of Monroe County, Florida (School Board), is charged with the duty to operate, control, and supervise the public schools within Monroe County, Florida, pursuant to Section 4(b) of Article IX of the Florida Constitution. The Superintendent of Schools (Superintendent) is authorized by law to act on behalf of the School Board in this proceeding. The respective duties and responsibilities of the

School Board and the Superintendent are set forth in the Florida Education Code at Chapter 1012.

2. Respondent was hired by the School District of Monroe County, Florida, on or about November 11, 1986. At all times pertinent to this action, Respondent was employed pursuant to a professional service contract as a teacher at MMS. She taught eighth grade English to students who were generally 13 to 14 years of age. Respondent's formal job evaluations have been satisfactory or better.

3. On October 26, 1989, Respondent committed the criminal offense of DUI by driving or being in actual physical control of a motor vehicle in the State of Florida while under the influence of alcohol to the extent that her normal faculties were impaired. Respondent was arrested and charged with committing the criminal offense of DUI. She submitted to a breath alcohol test, which indicated that her breath alcohol level was .19 grams of alcohol per 210 liters of breath. Pursuant to Section 316.193(1), Florida Statutes (1989), a person is guilty of driving under the influence if that person was in control of a car and had a breath-level alcohol reading of .10 grams or more.

4. On December 11, 1989, Respondent entered a plea of guilty to the criminal offense of DUI with regard to her arrest on October 26, 1989. The County Court of Monroe County, Florida

(the Court), adjudicated Respondent guilty of DUI, sentenced her to six months' probation, and suspended her Florida driving privileges for six months. Additionally, Respondent was required to pay a $250.00 fine and $222.50 in court costs. Her sentence also required her to perform 50 hours of community service and to complete DUI School.

5. On October 14, 1992, Respondent committed the criminal offense of DUI by driving or being in actual physical control of a motor vehicle in the State of Florida while under the influence of alcohol to the extent that her normal faculties were impaired. Respondent was arrested and charged with the criminal offense of DUI. Respondent submitted to two breath alcohol tests, which indicated that her breath alcohol level was .261 and .256 grams of alcohol per 210 liters of breath. Pursuant to Section 316.193(1), Florida Statutes (1992), a person is guilty of driving under the influence if that person was in control of a car and had a breath-level alcohol reading of .10 grams or more.

6. On January 25, 1993, Respondent entered a plea of nolo contendere to DUI with regard to her arrest on October 14, 1992. The Court adjudicated Respondent guilty of DUI, sentenced her to ten days in jail, 12 months' probation, and suspended her Florida driving privileges for five years. She was also required to pay fines and court costs in the amount of

$1,266.00, to perform 50 hours of community service, and to complete the Multiple DUI Offender Program.

7. On August 1, 1994, the Florida Commissioner of Education (COE) filed an Administrative Complaint against Respondent, which alleged that her Florida teaching certificate should be disciplined based on her DUI convictions in 1989 and 1992. The Administrative Complaint alleged that Respondent was guilty of gross immorality and/or an act involving moral turpitude.

8. On August 3, 1994, Respondent entered into a Settlement Agreement with the COE whereby she elected not to contest the allegations set forth in the Administrative Complaint.

9. Based on the Settlement Agreement between Respondent and the COE, the EPC entered a Final Order on September 22, 1994, which approved the terms of the Settlement Agreement executed by Respondent on August 3, 1994.

10. Pursuant to the terms of the Final Order, the EPC issued to Respondent a written reprimand, dated September 23, 1994, which stated, in pertinent part, that:

> [A]s a teacher you are required to exercise a measure of leadership beyond reproach. By your actions [i.e., 1989 and 1992 DUI convictions], you have lessened the reputation of all who practice our profession. Your actions cannot be condoned by the profession nor by the public who employ us. The Education Practices Commission sincerely hopes it is your

> intention to never allow this situation to occur again or indeed, to violate any professional obligation in fulfilling your responsibility as an educator. To violate the standards of the profession will surely result in further action being taken against you.

11. A copy of the written reprimand was placed in Respondent's state certification file and a copy was sent to the School Board for placement in Respondent's personnel file.

12. In addition to the reprimand, the Final Order placed Respondent's teaching certificate on probation for a period of two years and ordered her to: (1) submit to an examination and consultation with a licensed substance abuse counselor; (2) undergo a program of substance abuse counseling and treatment until such time as she was released from such treatment by a licensed substance abuse counselor; and (3) submit proof of successful completion of the substance abuse counseling program to the EPC. Respondent did not comply with these conditions of her probation. Respondent did not submit to an examination and consultation with a licensed substance abuse counselor who was mutually acceptable to the EPC and was, consequently, unable to tender proof to the EPC that she had successfully completed such a substance abuse counseling program. The EPC notified Respondent of her failure to comply with the settlement and final order by letter dated September 10, 1997. The EPC closed her probation file with the

notation that she had not satisfied the conditions of probation. There was no evidence that further disciplinary action was taken against Respondent for her failure to successfully complete the terms of her probation.

13. On January 17, 2003, Respondent committed the criminal offense of DUI by driving or being in actual physical control of a motor vehicle in the State of Florida while under the influence of alcohol to the extent that her normal faculties were impaired. Respondent submitted to two breath alcohol tests, which indicated that her breath alcohol level was .207 and .206 grams of alcohol per 210 liters of breath. Pursuant to Section 316.193(1) a person is guilty of driving under the influence if that person was in control of a car and had a breath-level alcohol reading of .08 grams or more. Respondent was aware that it is unlawful for an individual to drive or be in actual physical control of a vehicle while under the influence of alcohol when affected to the extent that the individual's normal faculties are impaired and/or while having a breath alcohol level of .08 or more grams of alcohol per 210 liters of breath.

14. On January 17, 2003, Respondent was arrested and charged with the criminal offense of DUI.

15. On May 12, 2003, Respondent entered a plea of nolo contendere to the criminal offense of DUI with regard to her arrest on January 17, 2003. The court adjudicated Respondent guilty of that criminal offense and sentenced her to serve 30 days in jail, or in the alternative, to serve 30 days in an approved in-patient substance abuse rehabilitation facility, followed by 12 months of probation. She was also required to pay fines and court costs in the amount of $2,393.00, to perform 150 hours of community service, to complete an Advanced DUI offender course, and to refrain from using alcohol during probation. Respondent's Florida driving privileges were suspended for a period of ten years.

16. Respondent chose to serve her time in jail in the Monroe County Jail located in Key West. She did not want to attend the state-sponsored rehabilitation program because it was a 61-day program and she believed the 30-day private rehabilitation program she wanted was too expensive.

17. Respondent's arrest for DUI on January 17, 2003, and the fact she had been convicted of DUI on two prior occasions became common knowledge and a topic of conversation in Marathon, which is a relatively small community. Students at MMS and MHS were aware of these facts about Respondent, as were parents of students, Respondent's colleagues, and the community in general.

18. On or about January 28, 2003, the Key West Citizen, a local newspaper in the Florida Keys, reported the news of Respondent's January 17, 2003 arrest for DUI and identified her as a teacher at MHS (sic).

19. The Monroe County Sheriff's Office web site reported Respondent's DUI arrest, the fact that she was a teacher at MMS, and a copy of her booking photograph. This information was readily available via the Internet. Students at MMS displayed Respondent's DUI booking photograph and information as wallpaper on the computers in the school library.

20. Respondent's acts are wholly inconsistent with Petitioner's efforts to teach students to say no to drugs and alcohol and to the efforts of such school-sponsored groups as Students Against Drunk Driving.

21. During the school year 2002/2003, Dr. Colvard was principal of MMS and MHS. At the time of the final hearing, he was retired. Dr. Colvard received a letter from one parent and an e-mail from another condemning Respondent's behavior.

22. Respondent's arrest for DUI on January 17, 2003, and the fact that it became common knowledge among her students and in the community that she had two prior DUI convictions, were of such notoriety to impair both her effectiveness to the school system and her service in the community.[1]

23. Mr. Lannon has been an educator in the Monroe County School system since 1973 and became Superintendent in 1996. Mr. Lannon recommended that the School Board terminate Respondent's employment because Respondent had, by her misconduct, lost credibility and effectiveness with students, parents, and the community.

24. Subsequent to Respondent's arrest on January 17, 2003, a beginning teacher was arrested for DUI. That teacher was disciplined with a reprimand. Mr. Lannon testified, credibly, that the beginning teacher's case was appropriately distinguished from Respondent's because that case did not generate the notoriety that Respondent's generated and because that was the first offense for the beginning teacher.

25. At all times pertinent to these proceedings, Respondent was aware of the Code of Ethics/ Principles of Professional Conduct and had been provided with and signed for copies of those documents.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties pursuant to the provisions of Chapters 120 and 1012.

27. Pursuant to Section 1012.27(5), a Superintendent has the authority to recommend to a School Board the dismissal of instructional employees when grounds exist for that action. The

grounds upon which a School Board may terminate an instructional employee's professional service contract includes those set forth in Section 1012.33(1)(a), which provides as follows:

> (1)(a) Each person employed as a member of the instructional staff in any district school system shall be . . . entitled to and shall receive a written contract as specified in this section. All such contracts . . . shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

28. The Administrative Complaint charges Respondent with being guilty of gross immorality, committing an act of moral turpitude, and misconduct in office. Being guilty of gross immorality is not one of the grounds for the termination of a professional service contract listed in Section 1012.33(1)(a). Pursuant to the holding and the rationale expressed in Dietz v. Lee Count Sch. Bd., 647 So. 2d 217 (Fla. 2d DCA 1994), the undersigned concludes that being guilty of gross immorality can be the basis for terminating a professional service contract, depending on the circumstances of the case.

29. Rule 6B-1.001 sets forth the Code of Ethics of the Education Profession, and provides the following in subsection (3):

(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.

30. Rule 6B-4.009(3) defines "misconduct in office" as:

> . . . a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, Florida Administrative Code, which is so serious as to impair the individual's effectiveness in the school system.

31. Rule 6B-4.009(2) defines "immorality" as:

> . . . conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

32. Rule 6B-4.009(6) defines "moral turpitude" as:

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

33. Rule 6B-4.009(5) defines "drunkenness" as:

> . . . (a) that condition which exists when an individual publicly is under the influence of alcoholic beverages or drugs to such an extent that his or her normal faculties are impaired; or (b) conviction on the charge of drunkenness by a court of law.

34. On October 26, 1989, Respondent was in public operating a motor vehicle with a blood alcohol level of 1.9 times the legal limit. On October 14, 1992, Respondent was in public operating a motor vehicle with a blood level of over 2.5 times the legal limit. On January 17, 2003, Respondent was in public operating a motor vehicle with a blood alcohol level of over 2.5 times the lawful limit. On each occasion, Respondent's condition meets the definition of drunkenness found in Rule 6B-4.009(5). The undersigned finds Respondent's conduct on these occasions to be inconsistent with standards of public conscience and good morals within the meaning of Rule 6B-4.009(2). Petitioner established that Respondent's arrest for DUI in January 2003 (and subsequent conviction), together with her two prior DUI convictions, were sufficiently notorious to bring Respondent and the education profession into public disgrace or disrespect and impair Respondent's service in the community, within the meaning of Rule 6B-4.009(2). It is concluded that under the circumstances of this case, Respondent is guilty of gross immorality that constitutes just cause for the termination of Respondent's employment, as alleged by Petitioner.

35. Respondent's high blood alcohol level on each occasion of her arrest for DUI established that she operated a motor vehicle in such an impaired condition as to constitute a danger

to innocent people. Under the circumstances of this case, each of Respondent's convictions for DUI should be should be considered a crime involving moral turpitude within the meaning of Rule 6B-4.009(6) and grounds for the termination of Respondent's employment as alleged by Petitioner.

36. Petitioner also proved by the requisite evidentiary standard that Respondent engaged in misconduct in office within the meaning of Rule 6B-4.009(3). Respondent's conduct violated her duty found in Rule 6B-1.001(3) to maintain the respect and confidence of colleagues, students, parents, and other members of the community and to strive to achieve and sustain the highest degree of ethical conduct. Petitioner established that Respondent's misconduct was sufficiently serious as to impair her effectiveness in the school system.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order that sustains the suspension of Respondent's employment without pay and terminates her professional service contract of employment as a classroom teacher effective March 11, 2003.

DONE AND ENTERED this 3rd day of October, 2003, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
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 3rd day of October, 2003.

ENDNOTE

1/ In addition to the direct evidence presented by Petitioner that Respondent's effectiveness has been impaired, the undersigned has relied on recent cases permitting a finder of fact to infer from the severity of the misconduct that a teacher's effectiveness has been impaired. See Purvis v. Marion County Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000), and Walker v. Highlands County Sch. Bd., 752 So. 2d 127 (Fla. 2d DCA 2000).

COPIES FURNISHED:

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

Gordon Rogers, Esquire
Muller, Mintz, Kornreich, Caldwell, Casey,
Crosland & Bramnick, P.A.
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131

Dirk M. Smits, Esquire
Monroe County School Board
241 Trumbo Road
Key West, Florida 33041-1788

Michael Lannon, Superintendent
Monroe County School Board
Post Office Box 1788
Key West, Florida 33041-1788

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
1244 Turlington Building
315 West Gaines Street
Tallahassee, Florida 32399-0400

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.