

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,     )  
  )  
      Petitioner,                        )  
  )  
vs.                                        )     Case No. 03-1227  
  )  
KARI E. SHOUSE,                        )  
  )  
      Respondent.                       )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on June 10, 2003, in Saint Petersburg, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jacqueline M. Spoto Bircher, Esquire  
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For Respondent: Mark Herdman, Esquire  
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STATEMENT OF THE ISSUE

Whether Respondent should be dismissed from her employment with Petitioner based on the allegations contained in Petitioner's letter to Respondent dated October 25, 2002.

PRELIMINARY STATEMENT

By letter dated October 25, 2002, the Superintendent of Petitioner Pinellas County School Board (School Board) notified Respondent Kari E. Shouse (Shouse) that she was suspended from her position with the School Board and that a recommendation of dismissal would be presented to the School Board at its November 11, 2002, meeting. By letter dated November 1, 2002, Shouse requested an administrative hearing.

The case was forwarded to the Division of Administrative Hearings on April 3, 2003. The case was originally assigned to Administrative Law Judge Fred L. Buckine, but was transferred to the undersigned to conduct the final hearing.

At the final hearing, the School Board called the following witnesses: Jayme Klapperich, Arnold Klapperich, Scott Dissinger, Ryan Zander, Amanda Zander, Lindsei Spagnola, Loretta Stone, David Willard, Dorothy Zeason, Mike Miller, and Jim Barker. Petitioner's Exhibits 1, 2, and 4 through 12 were admitted in evidence. Shouse testified in her own behalf and presented no exhibits.

At the final hearing, the parties agreed to file their proposed recommended orders within ten days of the filing of the transcript. Two volumes of the Transcript were filed on July 3, 2003. A portion of the Transcript had been omitted by the court reporter, and that portion of the Transcript was filed on

July 21, 2003. On July 14, 2003, Petitioner filed an unopposed Motion for Enlargement of Time to Submit Findings of Fact, Conclusions of Law and Supporting Memorandum. The motion was granted, giving the parties until July 24, 2003, in which to file their proposed recommended orders. The parties timely filed their Proposed Recommended Orders.

#### FINDINGS OF FACT

1. Shouse was employed by the School Board as a teacher's assistant for nearly three years. Her duties included administering tests to students who were in the Exceptional Student Education (ESE) program at North East High School. Most of the ESE students had difficulty reading, and it was Shouse's responsibility to assist them in reading the examinations and other materials which could be used in taking the examinations.

2. Jayme Klapperich (Mrs. Klapperich) and Arnold Klapperich (Mr. Klapperich) taught earth science at North East High School. On October 7 and 8, 2002, Shouse was assigned to administer the first quarter earth science examination for the ESE students in Mr. and Mrs. Klapperich's classes.

3. The examination was a 110-question, multiple-choice test, which was divided into 11 sections. Each section represented a chapter in the textbook, and each section was divided into two subsections. Each subsection consisted of five definitions followed by five vocabulary words. The students

were to match the definitions to the correct vocabulary word. Shouse had administered similar examinations for the Klapperichs in the past.

4. Part of each student's classwork in the Klapperichs' classes included the preparation of a notebook which was divided by chapters of the textbook. Each chapter section was supposed to include vocabulary words and definitions, questions and answers on the materials in the chapter, and quizzes and tests that had been given on that chapter. The quality of the notebook varied by student, and some of the students' notebooks were incomplete. The students were allowed to use their notebooks during the first quarter examination, but each student could use only the notebook which that student had prepared.

5. The examination was administered in a conference room where other examinations were also being administered by another teacher's assistant. The Klapperich students sat at a long table with Shouse seated at the end of the table and the students seated on each side.

6. Shouse administered the examination to ten ESE students in Mr. Klapperich's class on October 7, 2002. She went to Mr. Klapperich's class to get the students who would be taking the examination in the conference room. She was present when Mr. Klapperich advised the students that each student was to use only his or her own notebook during the test.

7. During the administration of the examination to Mr. Klapperich's students, the students were loud and were shouting out the answers to one another. Shouse would read the question, and some of the students would raise their hands or just shout out an answer. If the answer was incorrect, Shouse would give them the correct answer. Eventually, Shouse began to give the correct answers to the students.

8. The ten ESE students in Mr. Klapperich's class who took the test administered by Shouse on October 7 made "A's" on their examination. Many of the students missed the same questions.<sup>1</sup>

9. Shouse administered the examination to eight ESE students in Mrs. Klapperich's class on October 8, 2002. As in the examination for Mr. Klapperich's class, the students were allowed to use only their own notebook. One of the students did not have his notebook with him during the examination.

10. The normal time for taking the examination would have been at least an hour. The ESE students to whom Shouse administered the examination on October 8 finished the examination in 15 to 25 minutes. Mrs. Klapperich commented to one student on the short amount of time it took the students to take the test.

11. During the examination, Shouse read the examination questions to the students as a group. She then read the answer from one student's notebook. Shouse testified that she checked

each student's notebook before reading the answer to make sure that the student had the correct answer in his or her notebook. Her testimony is not credible. One student did not have his notebook. By her own admission, the writing in many of the notebooks was practically illegible. It would not have been possible to read 110 questions, to find the answers in the notebook, and to check the notebooks of eight students for each question to make sure the student had the definition in his notebook in the span of 25 minutes.

12. The students taking the examination on October 8 made "A's" on their examinations. All the students gave the same incorrect answers for questions 14, 15, 69, and 70. Mrs. Klapperich became suspicious because all the students made "A's" and they all gave the same incorrect answers to four questions. Additionally, six of the students had grade averages of "F" prior to taking the test. Her suspicions were further aroused when she confiscated a note immediately after the test which was written to a classmate by one of the students who had taken the examination with Shouse's assistance. The student admitted at the final hearing that she wrote the note and that the note concerned the earth science examination administered by Shouse on October 8. The note stated in part:

I wrote. She read the questions -n- gave us the answers.

\* \* \*

(101) Should have gone it was the easiest thing I've done all year.

13. Mrs. Klapperich discussed her suspicions with her husband, and they agreed to report the situation to school administrators. An investigation ensued. The students were required to retake the examination in November. Because many of the students no longer had their notebooks, the students were allowed to use their textbooks in the examination.

14. Eight of the students in Mr. Klapperich's class retook the examination. The time these students took in taking the test ranged from 80 to 150 minutes. Four of the students made "A's." Three students made "B's," and one student made an "F."

15. Five of the students in Mrs. Klapperich's class retook the examination. The time for taking the examination for these students ranged from 65 to 135 minutes. One student made an "A," one student made a "B," two students made "C's," and one student made a "D."

16. The School Board had adopted disciplinary guidelines for employees of the School Board. School Board Policy 8.25(1)(v), provides that the penalty range for misconduct or misconduct in office is from caution to dismissal.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Sections 120.569 and 120.57, Florida Statutes.

18. The School Board seeks to dismiss Shouse for misconduct. The School Board has the burden to establish the allegations against Shouse by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883, 884 (Fla. 3rd DCA 1990).

19. The School Board has authority to dismiss School Board employees pursuant to Section 230.23(5)(f), Florida Statutes (2001). Section 231.3605(2)(b), Florida Statutes (2001), applies to the termination of educational support staff such as teacher's assistants, and provides:

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist, or reduces the number of employees on a districtwide basis for financial reasons.

(c) In the event a superintendent seeks termination of an employee, the school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeals process will be determined by the



appropriate collective bargaining agreement or by school board rule in the event there is no collective bargaining agreement.

20. School Board Policy 8.25(1)(v) provides that an employee may be disciplined for misconduct in office. The policy does not define misconduct in office; however, the Department of Education's definition of misconduct as set forth in Rule 6B-4.009(3), Florida Administrative Code, is instructive and provides:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

21. The principles of professional conduct require that educators shall "make reasonable effort to protect the student from conditions harmful to learning" and "maintain honesty in all professional dealings." Rules 6B-1.006(3)(a) and 6B-1.006(5)(a), Florida Administrative Code.

22. The School Board has established by a preponderance of the evidence that Shouse did give answers to students during the administration of the Klapperichs' earth science examinations, and that the manner in which she read from one student's notebook enabled others to benefit from materials in a notebook other than their own in violation of the Klapperichs'

instructions. Such actions are dishonest and harmful to the students' learning. Shouse's conduct impaired her effectiveness in the school system and constitutes misconduct in office.

RECOMMENDATION

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

RECOMMENDED that a Final Order be entered finding Kari E. Shouse guilty of misconduct in office and dismissing her from employment with Petitioner.

DONE AND ENTERED this 15th day of August, 2003, in Tallahassee, Leon County, Florida.



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SUSAN B. KIRKLAND  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of August, 2003.

ENDNOTE

1/ All of the students gave "b" as an answer for question 69 and "c" for question 70. When the papers were graded, seven students' answers to these questions were checked as incorrect, and three students' answers were not checked as incorrect. Nine of the students gave "d" as the answer for question 21 and "c"

for question 22. Five of the nine students' answers to these questions were checked as incorrect, and the remaining four students' answers were not checked as incorrect.

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.