

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 03-3102
)
 ALGERNON J. MOORE, JR.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 12, 2004, by video teleconference with connecting sites in Miami and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Larry R. Handfield, Esquire
Office at Bay Point, Suite 1200
4770 Biscayne Boulevard
Miami, Florida 33137

STATEMENT OF THE ISSUES

The issues for determination are whether Respondent's suspension should be upheld and whether his employment with

Petitioner should be terminated, as set forth in Petitioner's action letter dated August 21, 2003.

PRELIMINARY STATEMENT

By letter dated August 21, 2003, Miami-Dade County School Board (School Board) notified Algernon J. Moore, Jr. that at its scheduled meeting on August 20, 2003, the School Board suspended him from employment and initiated proceedings to terminate his employment with the School Board. Mr. Moore contested the suspension and termination and requested a hearing. On August 26, 2003, this matter was referred to the Division of Administrative Hearings.

On September 16, 2003, the School Board filed a Notice of Specific Charges, consisting of four counts. Subsequently, the School Board was granted leave to file an Amended Notice of Specific Charges, consisting of four counts. The Amended Charges charged Mr. Moore as follows: Count I, Misconduct In Office--violating Florida Administrative Code Rules 6B-1.006(3)(a) and (e), 6B-1.001(1), (2), and (3), 6B-1.006(3)(b) and (e), so serious as to impair his effectiveness and committing misconduct constituting just cause for suspension and dismissal pursuant to Sections 1.001.32(2), 1012.22(1)(f), 1012.40, and 447.209, Florida Statutes (2002), and Article XXI, Sections 1.B.1.a. and e. of the United Teachers of Dade (UTD) Contract; Count II, Corporal Punishment-Prohibited--violating

repeatedly School Board Rule 6Gx13-5D-1.07, constituting just cause for suspension and dismissal pursuant to Sections 1.001.32(2), 1012.22(1)(f), 1012.40, and 447.209, Florida Statutes (2002), and Article XXI, Sections 1.B.1.a. and e. of the UTD Contract; Count III, Violence In The Workplace-- violating repeatedly School Board Rule 6Gx13-4-1.08, constituting just cause for suspension and dismissal pursuant to Sections 1.001.32(2), 1012.22(1)(f), 1012.40, and 447.209, Florida Statutes (2002), and Article XXI, Sections 1.B.1.a. and e. of the UTD Contract; and Count IV, Responsibilities And Duties-- violating repeatedly School Board Rule 6Gx13-4A-1.21, constituting just cause for suspension and dismissal pursuant to Sections 1.001.32(2), 1012.22(1)(f), 1012.40, and 447.209, Florida Statutes (2002), and Article XXI, Sections 1.B.1.a. and e. of the UTD Contract.

Prior to hearing, the parties entered into and filed a Joint Pre-Hearing Stipulation. At hearing, the School Board presented the testimony of 13 witnesses and entered 16 exhibits (Petitioner's Exhibits numbered 1-8, 15-17, and 20-24)¹ into evidence. Mr. Moore testified in his own behalf and entered ten exhibits (Respondent's Exhibits numbered 1-10) into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the

transcript. The Transcript was filed on July 26, 2004. The parties subsequently requested and were granted two extensions of time to file their post-hearing submissions. Also, after the close of the hearing, the School Board inadvertently failed to forward to the undersigned certain exhibits which were entered into evidence at the video teleconference hearing. The parties' filed post-hearing submissions which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, the School Board was a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within the school district of Miami-Dade County, Florida, pursuant to Article IX, Florida Constitution, and Section 1001.32, Florida Statutes (2002).

2. At all times material hereto, Mr. Moore was employed full-time with the School Board as a paraprofessional at Robert Renick Educational Center (Renick) and subject to the rules and regulations of the School Board in accordance with Section 1012.33, Florida Statutes (2002).

3. The UTD Contract, between the School Board and UTD, also governs the terms and conditions of Mr. Moore's employment.

4. In April 1977, Mr. Moore began his employment with the School Board and was assigned to Renick. He remained at Renick as a paraprofessional through February 9, 2003.

5. In December 1996, prior to beginning his employment with the School Board, Mr. Moore was charged with possession of stolen property and driving with a suspended license and an expired registration. A few months later, on February 20, 1997, Mr. Moore completed an application for employment with the School Board and indicated on the application that he had no criminal charges pending. However, at the time that he made application for employment, the charges of December 1996 were pending.

6. Mr. Moore does not contest several performance problems and deficiencies for the period October 19, 1998 through March 10, 2002.

a. By memorandum dated October 27, 1998, Mr. Moore was notified by the assistant principal, James DeWitt, that he violated School Board policy on October 19, 1998, by allowing a student to be in possession of the key to his classroom. Mr. DeWitt advised Mr. Moore that a reoccurrence of the violation would lead to a conference-for-the-record.

b. By memorandum dated October 17, 2000, Mr. Moore was notified by Mr. DeWitt that he had arrived late at school that same day without notifying the main office of his tardiness in

accordance with the UTD Contract. Mr. DeWitt directed Mr. Moore to adhere to the established work hours and advised Mr. Moore that further failure to adhere to his work schedule would result in disciplinary action.

c. By memorandum dated November 2, 2000, Mr. Moore was notified by Mr. DeWitt that, on November 1, 2000, he (Mr. Moore) was playing a game on his computer while the students were taking a test even though he was required to monitor the test; and that his (Mr. Moore's) failure to supervise and monitor the test resulted in a student writing the answers in the wrong section of the test. Mr. DeWitt directed Mr. Moore to adhere to his duties in his job description and advised Mr. Moore that, among other things, his lack of supervision would not be tolerated and that his failure to adhere to the duties would result in disciplinary action.

d. By memorandum dated March 5, 2001, Mr. Moore was notified by the principal, Eugenia Smith, that, among other things, he was on leave without authorization for 17 days of the 2000-2001 school year, from February 8, 2001 through March 5, 2001. Ms. Smith directed Mr. Moore to, within three (3) days of the date of the memorandum, provide his intended date of return or resign from employment with the School Board.

e. By memorandum dated December 20, 2001, Mr. Moore was notified by Mr. DeWitt that, on December 5, 2001, because of his

(Mr. Moore's) lack of supervision, a student pushed the emergency call button twice even though no emergency existed.

Mr. DeWitt directed Mr. Moore to adhere to his duties in his job description and advised Mr. Moore that his failure to adhere to the duties would result in disciplinary action.

f. By memorandum dated March 8, 2002, Ms. Smith notified Mr. Moore that he had been tardy for several days, specifying the days of tardiness.

g. On March 8, 2002, a conference-for-the-record was held with Mr. Moore to address his tardiness, including noncompliance with verbal and written directives regarding his tardiness. Also present were, Ms. Smith, Mr. DeWitt, and a UTD representative. At the conference-for-the-record Mr. Moore was given specific directives regarding future tardiness, which were to be to work on time and to adhere to procedures in the UTD contract. A summary of the conference-for-the-record dated March 10, 2002, was prepared and was subsequently signed by Mr. Moore.

7. By memorandum dated November 8, 2002, Mr. Moore was notified by Mr. DeWitt that, on November 7, 2002, Mr. Moore's personal telephone was confiscated because it had been used in the classroom as an extension of the school's telephone system.

8. By memorandum dated November 13, 2002, Mr. Moore was notified by Mr. DeWitt that his (Mr. Moore's) use of his

personal telephone as an extension of the school's telephone system was a violation of the School Board's policy prohibiting telephones in the classroom unless approved by the administration. Mr. DeWitt directed Mr. Moore to adhere to School Board policies and advised Mr. Moore that failure to do so would result in disciplinary action.

9. Mr. Moore does not contest violating the School Board's policy regarding the use of his personal telephone in the classroom.

10. By memorandum dated January 17, 2003, Mr. DeWitt notified Mr. Moore that, on January 22, 2003, he (Mr. Moore) left the school for approximately one and one-half hour, from approximately 11:50 a.m. to 2:20 a.m., without signing-out as required by the School Board's policy. Mr. DeWitt directed Mr. Moore to adhere to the scheduled work hours and advised (Mr. Moore) that his failure to so adhere would result in further disciplinary action.

11. On January 22, 2003, Mr. Moore was arrested based on an outstanding warrant for the December 1996 charges previously indicated.

12. Renick is a special center for emotionally handicapped and severely emotionally disturbed students. The student's have emotional problems, which interfere with their ability to learn. The teachers, including paraprofessionals, at Renick are

specially trained to deal with the behavior problems of the students.

13. The School Board adheres to a graduated system of discipline for students, which consists of the following: first, student conferences are held, then parent conferences, and then parent-teacher conferences; and after the conferences, indoor suspension, then detention, and, lastly, outdoor suspension. Also, located in each classroom is a call button to call security for assistance if needed.

14. The use of profanity and corporal punishment is prohibited by School Board rules.

15. As a paraprofessional with the School Board for several years, Mr. Moore knew or should have known the School Board's graduated system of discipline, rules, and policies.

16. Training is provided for teachers, including paraprofessionals, in the management of students at Renick, who are misbehaving. Also, in-house workshops are provided. The training is "crisis management," which was formerly safe physical management. In crisis management, physical restraint is the last resort; interventions are used instead. A student's parent must consent in writing for the use of physical restraint; however, even without consent, physical restraint may be used for situations that do not de-escalate.

If physical restraint is used, the situation must be documented and the student's parent must be notified.

17. One intervention is a prearranged intervention in which the student and teacher agree on a technique to be used by the teacher to make the student aware that his/her behavior is escalating. The prearranged intervention may be, for instance, a pulling of the student's ear.

18. If the prearrange intervention fails to de-escalate the student's behavior, another intervention referred to as proximity control may be used. In this technique, the student feels the teacher's presence by the teacher moving towards the student, which interrupts the student's behavior.

19. If no interventions, whether verbal or non-verbal, de-escalates the student's behavior, which begins to get out-of-control, forms of physical restraint may be used, as a last resort. One form of physical restraint is for the teacher to hold the student with his/her hand to communicate to that student that his/her behavior is escalating, with safety being the primary issue.

20. If the student's behavior continues to escalate, the teacher may resort to a more restrictive restraint such as the cradle. In using this technique, both the student and teacher are standing, with the student having his/her back to the teacher, and the teacher holding the student, with safety being

the primary issue. Again, the teacher is attempting to have the student realize that his/her behavior is escalating.

21. If the student's behavior continues to escalate, the teacher may take the student to the floor. One technique used is the cradle assist. In this technique, the student is brought to the floor by the teacher and the student is held by the teacher in a cradle-like position.

22. If the student's behavior continues to escalate, the teacher, with the assistance of a colleague, may hold the student to the floor. Using a colleague, assists the student in calming down.

23. Whenever physical restraint is used, the parents of the student are notified. Furthermore, the student is counseled, and the student's file must be documented regarding the use of physical restraint.

24. Mr. Moore received the training as to the interventions and the physical restraints. Furthermore, he attended at least one in-house workshop. Therefore, Mr. Moore had knowledge of the behavior techniques.

25. A past performance problem involving Mr. Moore and a student was documented by a memorandum dated July 24, 1998 from Mr. DeWitt to Mr. Moore. The memorandum addressed "alleged misconduct" by Mr. Moore committed on July 20, 1998, in which Mr. Moore allegedly choked a student, when he was putting the

student in time-out, and used inappropriate language by calling the student a "faggot." Although the memorandum indicated that Mr. Moore stated that he may have grabbed the student's neck, the memorandum did not indicate that the allegation was confirmed. Mr. DeWitt directed Mr. Moore to "refrain from using inappropriate procedures and language" while performing his duties. The statement by Mr. Moore showed that he admitted, not denied, that he did take some action with the student.

26. Regarding incidents with students, the Amended Notice of Specific Charges alleges a specific incident, occurring on December 19, 2002, between Mr. Moore and a student, J. G. Allegedly, Mr. Moore told J. G. that he "was going to kill him" and "for him [J. G.] to meet him [Mr. Moore] at the store in five minutes since he [J. G.] was bad, so they could fight"; and that he "was going to make him [J. G.] his girl"; Furthermore, Mr. Moore allegedly called J. G. a "fat bitch." Additionally, Mr. Moore allegedly told another student, X. W., that he would "fuck X. W.'s mother in the grave" and called X. W. a "faggot." Also, Mr. Moore allegedly grabbed another student, I. J., and subsequently, another student, M. S., and pulled their arms behind their backs and pushed them against a wall.

27. Further, the Amended Notice of Specific Charges contains a general allegation of how Mr. Moore treated students, i.e., "Moore often hit students with a broomstick on the legs

and buttocks, pushed students to the ground, picked a student up and slammed him to the floor, wrestled students in the classroom, and often called them gay."

28. As to the general allegation, student D. J. testified regarding Mr. Moore pushing a student to the ground. D. J. testified that he did not want to do his work and attempted to leave the classroom without permission from Mr. Moore; that Mr. Moore would not allow him to leave the room; and that Mr. Moore placed him on the floor, face first, with his (D. J.'s) arms behind his back in a manner that hurt him (D. J.). No one else was in the classroom to witness the alleged incident. No specific time period was provided for the alleged incident. Mr. Moore's testimony did not address this particular incident. In considering D. J.'s credibility, the undersigned must include, as a factor, that the students at Renick have behavior problems but that also the students should expect to be treated in accordance with the School Board's established crisis management techniques. D. J.'s demeanor and candor, during his testimony, detracted from the credibility of his testimony. The undersigned does not find D. J.'s testimony convincing.

29. Even if Mr. Moore engaged in the physical restraint of D. J., the evidence presented fails to demonstrate that Mr. Moore's action was inappropriate under the circumstances.

D. J. was attempting to force his way out of the class. However, Mr. Moore failed to document the incident and notify D. J.'s parents that physical restraint was used.

30. Also, as to the general allegation, student M. L. testified regarding picking a student up and slamming the student to the floor. M. L. testified that, except for him, all the other students in the class had completed their work and were in the rear of the classroom with the teacher; that he had just completed his work and was walking to the rear of the class when Mr. Moore walked into the classroom; that Mr. Moore told him that he was out of his seat without permission; and that Mr. Moore picked him up and slammed him to the floor, placing his (Mr. Moore's) knee in M. L.'s back. Mr. Moore testified that M. L. was out of his seat without permission and that M. L. was running in the classroom and would not sit down even though Mr. Moore asked him to sit down and stop running. M. L. admitted that he had been disciplined before for running around in the classroom. Mr. Moore admits that he put M. L. to the floor, which de-escalated the situation, and that he then allowed M. L. to get up. Furthermore, Mr. Moore admits that he did not document the incident and did not notify the parents of M. L. that physical restraint had been used on M. L.

No testimony was presented from Mr. Moore's supervising teacher, Jaime Calaf, regarding the incident with M. L. No other testimony was presented.

31. As to the incident with M. L., the only witnesses testifying were M. L. and Mr. Moore. In considering M. L.'s credibility, the undersigned must include, as a factor, that the students at Renick have behavior problems but that also the students should expect to be treated in accordance with the School Board's established crisis management techniques. M. L.'s demeanor and candor, during his testimony, and his admission that he had been disciplined for the same action previously detracted from the credibility of his testimony. Specifically, the undersigned is not convinced that M. L. had completed his work, that he was not disruptive, that Mr. Moore slammed M. L. to the floor, and that Mr. Moore put his knee in M. L.'s back. Mr. Moore admits that he put, not slammed, M. L. to the floor. The undersigned does not find M. L.'s testimony convincing. The evidence presented fails to demonstrate that Mr. Moore's action was inappropriate under the circumstances. However, Mr. Moore failed to document the situation and failed to notify the parents of M. L. as required that physical restraint had been used with M. L.

32. Regarding the general allegation that Moore often hit students with a broomstick on the legs and buttocks, wrestled

students in the classroom, and often called them gay, M. L. testified as to Mr. Moore punching students in the arm, who were misbehaving, and O. B. testified as to Mr. Moore hitting students with a broom.

33. M. L. testified that, at times, Mr. Moore punched him and other students in the arm when they were misbehaving. The undersigned's decision as to M. L.'s credibility remains the same. The evidence fails to demonstrate that Mr. Moore punched students who were misbehaving.

34. O. B. testified that Mr. Moore attempted to hit him once with a broom when he was misbehaving and, at times, hit other students with a broom when they were misbehaving. In considering O. B.'s credibility, the undersigned must include, as a factor, that the students at Renick have behavior problems but that also the students should expect to be treated in accordance with the School Board's established crisis management techniques. O. B. testified that he did not consider J. B. to be a disruptive student; whereas, the evidence presented, regarding J. B., clearly indicates that J. B. is a disruptive student. O. B.'s demeanor and candor, during his testimony, together with his unsupported conclusion that J. B. was not a disruptive student, detracted from the credibility of his testimony. The undersigned does not find O. B.'s testimony convincing.

35. Further, Mr. Calaf testified that, on occasions, he observed Mr. Moore grabbing students in the back and getting rough with them. Mr. Calaf did not testify that he reported his observations to the principal or other person who could exact discipline upon Mr. Moore. Moreover, Mr. Calaf did not testify that what he observed was inappropriate or contrary to the established crisis management training. Consequently, Mr. Calaf's observations cannot be used to support the alleged inappropriate conduct by Mr. Moore.

36. Regarding the specific incident involving J. G. in the Amended Notice of Specific Charges, according to the principal of Renick, Eugenia Smith, she would not have recommended the dismissal of Mr. Moore if it had not been for the incident on December 19, 2002, involving J. G., a middle school student at the time. No dispute exists that the School Board uses progressive discipline. For Ms. Smith, the incident involving J. G. was the incident that triggered the dismissal of Mr. Moore. As a result, this incident is the defining incident for Ms. Smith's decision to recommend dismissal of Mr. Moore and, therefore, if this incident is not proven, the basis for her recommendation of Mr. Moore's dismissal no longer exists.

37. As to the specific incident involving J. G., the witnesses to the incident are J. G., other Renick students in the class, and Mr. Moore. No dispute in the testimony exists

that, on December 19, 2002, Mr. Moore and J. G. got into a shouting match and that Mr. Moore never touched J. G.

38. At Renick, J. G. was disruptive in his classes and had had many discipline problems. One psychologist at Renick, Joseph Strasko, described J. G. as physically disruptive and aggressive. Another psychologist at Renick, Theodore Cox, Jr., had observed J. G. engaging in inappropriate behavior. Also, Mr. Strasko described J. G. as a student who would not tell the truth when it was detrimental to him (J. G.); whereas, Mr. Cox had not known J. G. to tell an untruth. As to whether J. G. would tell the truth, the undersigned finds Mr. Strasko to be more credible and, therefore, finds that J. G. will not tell the truth when it is detrimental to him (J. G.).

39. As to what lead to the shouting match, only Mr. Moore was certain as to what happened. The undersigned finds Mr. Moore's testimony credible regarding this aspect of the incident. J. G. was bullying a new student in the class and had physically moved toward the new student. Mr. Moore interceded to stop the bullying by J. G. and to protect the new student, requesting J. G. to take his seat but J. G. refused. Mr. Moore kept himself between J. G. and the new student, thereby, preventing J. G. from advancing upon the new student.

40. What Mr. Moore said during the shouting match is where the testimony differs. However, no dispute exists as to certain

aspects of the incident: that J. G. became angry and disrespectful toward Mr. Moore; that J. G. stated to Mr. Moore that, if Mr. Moore put his hands on him, he (J. G.) would bring his father and brother to Renick and they would deal with Mr. Moore; and that J. G. used profanity with Mr. Moore.

41. Mr. Moore denies that he used profanity or disparaging remarks during the incident with J. G. The crisis management expert, Mr. Strasko,² testified that it is not appropriate for a teacher to shout profanities at a student who is shouting profanities at the teacher; and that a teacher is required to be professional even when students are being disruptive.

42. X. W., a student who was at Renick in the class at the time of the incident on December 19, 2002, testified that Mr. Moore called J. G. a "fat bitch" and called him (X. W.) a "punk." X. W. is J. G.'s cousin.

43. D. J., a student who was at Renick in the class at the time of the incident on December 19, 2002, testified that he did not hear about what J. G. and Mr. Moore were arguing. However, D. J. testified that, when J. G. told Mr. Moore that he (J. G.) was going to bring his (J. G.'s) brother, Mr. Moore told J. G. to bring his brother and that he (Mr. Moore) would "lay him on the ground."

44. O. B. a student who was at Renick in the class at the time of the incident on December 19, 2002, testified that, when

J. G. told Mr. Moore that he (J. G.) was going to bring his (J. G.'s) brother, Mr. Moore told J. G. to bring his brother to the store and that they would deal with it then. O. B. further testified that J. G. and Mr. Moore were calling each other gay and other derogatory names.

45. Further, regarding the incident on December 19, 2002, Mr. Calaf did not witness the incident. Mr. Calaf returned to the class after the incident had occurred and observed J. G. crying and Mr. Moore and J. G. shouting at each other. Mr. Calaf did not testify as to what Mr. Moore and J. G. were shouting but did testify that he advised Mr. Moore that he (Mr. Moore) should not shout at students and should always remain professional, not getting on the level of the students. As to J. G.'s being disruptive in the class, Mr. Calaf testified that J. G. was generally disruptive and that usually Mr. Moore could calm J. G. down. The undersigned finds Mr. Calaf's testimony credible.

46. In considering J. G.'s credibility, the aforementioned factors describing J. G. must be considered.

47. In considering X. W.'s credibility, the undersigned must include, as a factor, that the students at Renick have behavior problems but also that teachers are required not to use profanity and to be professional.

Further, the undersigned must consider the fact that X. W. is J. G.'s cousin, which was unbeknownst to Ms. Smith.

48. In considering D. J.'s credibility, the undersigned must consider the factor that D. J. complained that Mr. Moore used physical restraint against him in an earlier incident in which the only witnesses were he and Mr. Moore. The incident and D. J.'s credibility are addressed earlier in these findings.

49. In considering O. B.'s credibility, the undersigned must consider that O. B. complained that he observed Mr. Moore hitting students at Renick with a broom. The incident and O. B.'s credibility are addressed earlier in these findings.

50. In considering Mr. Moore's credibility, the character testimony provided by Mr. Strasko and the character letters provided by Mr. Moore's colleagues must be considered. Mr. Strasko and Mr. Moore's colleagues address, among other things, what they consider the appropriate manner in which Mr. Moore handled students who were having behavior problems. Further, Mr. Moore's length of employment with the School Board, and his aforementioned past performance situations must be considered, including the one documented alleged inappropriate crisis management technique and language used by Mr. Moore in July 1998.

51. Taking all of the aforementioned factors of credibility into consideration, the undersigned finds

Mr. Moore's testimony more credible than the students, the character testimony and letters persuasive, and the lack of evidence, as to what was said, by a witness who was not involved in the incident, i.e., Mr. Calaf. Therefore, the undersigned finds that Mr. Moore did not use profanity during the incident of December 19, 2002.

52. Mr. Moore did not report the incident involving J. G. Mr. Moore did not believe that the incident rose to the level that reporting was necessary. Moreover, no physical restraint was used.

53. On May 1, 2003, a conference-for-the-record was held with Mr. Moore by the School Board's Office of Professional Standards (OPS) to review his employment history and future employment with the School Board. Among those in attendance with Mr. Moore were a UTD advocate, Ms. Smith, and the assistant superintendent for the Office of Exceptional Student Education and Student/Career Services. By a summary of the conference-for-the-record, dated June 6, 2003, the conference-for-the-record was memorialized.

54. By memorandum dated May 28, 2003, Ms. Smith and the assistant superintendent recommended the dismissal of Mr. Moore.

55. By letter dated August 21, 2003, the School Board notified Mr. Moore that at its meeting on August 20, 2003,

it took action to suspend him and initiate dismissal proceedings against him from all employment with it.

CONCLUSIONS OF LAW

56. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2003).

57. The School Board has the burden of proof to show by a preponderance of the evidence that Mr. Moore committed the offenses in the Amended Notice of Specific Charges. McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

58. Per the UTD Contract, the School Board reserves exclusively the right for "separation, suspension, dismissal, and termination of employees for just cause." Article V, Section 1.

Count I, Misconduct In Office

59. Florida Administrative Code Rule 6B-4.009, Criteria for Suspension and Dismissal, provides in pertinent part:

The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes. The basis for each of such charges is hereby defined:

* * *

(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, FAC., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

60. Florida Administrative Code Rule 6B-1.001 provides in pertinent:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(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.

61. Florida Administrative Code Rule 6B-1.006 provides in pertinent part:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

62. The School Board contends that the use of violent, abusive, and inappropriate language with the students and wholly inappropriate physical restraint of the students by Mr. Moore constitute a violation of Florida Administrative Code Rule 6B-1.006(3)(a) and (e) and are so serious as to impair his effectiveness in the school system; that Mr. Moore's arrest in January 2003 for the criminal charges of December 1996 and his failure to resolve them for several years constitute a violation of Florida Administrative Rule 6B-1.001(1), (2), and (3), and are so serious as to impair his effectiveness in the school system; and that Mr. Moore's repeated tardiness, absences from work, and careless supervision of students constitutes a violation of Florida Administrative Code Rule 6B-1.006(3)(a) and (e) and are so serious as to impair his effectiveness in the

school system. Consequently, the School Board contends that Mr. Moore's suspension and dismissal for cause are justified.

63. As to the violations, the School Board demonstrated that Mr. Moore's arrest in January 2003 for the criminal charges of December 1996 and his falsification of his employment application violated Florida Administrative Code Rule 6B-1.001(1), (2), and (3); and that his repeated tardiness, absences from work, and careless supervision of students violated Florida Administrative Code Rule 6B-1.006(3)(a). The School Board failed to demonstrate that Mr. Moore used violent, abusive, and inappropriate language and wholly inappropriate physical restraint in violation of Florida Administrative Code Rule 6B-1.006(3)(a) and (e).

64. Regarding whether the violations were so serious as to impair Mr. Moore's effectiveness in the school system, the evidence was insufficient to show that his effectiveness was diminished in the school system; however, the evidence is sufficient to infer that his effectiveness was impaired only as to the pending criminal charges and their relationship to the falsification of his employment application. Walker v. Highlands County School Board, 752 So. 2d 127 (Fla. 2d DCA 2000). Mr. Moore's conduct, as to falsifying his employment application, was "by its very nature, demonstrates his ineffectiveness in the school system" and "independent evidence"

of his effectiveness in such a situation would be "superfluous."
Id., at 128.

65. Consequently, the School Board has demonstrated that Mr. Moore committed misconduct in office and that just cause exists for suspension and dismissal.

Count II, Corporal Punishment-Prohibited

66. School Board Rule 6Gx13-5D-107 provides in pertinent part:

The administration of corporal punishment in Miami-Dade County Public Schools is strictly prohibited. Miami-Dade County Public Schools has implemented comprehensive programs for the alternative control of discipline. These programs include, but are not limited to, counseling, timeout rooms, in-school suspension centers, student mediation and conflict resolution, parental involvement, alternative education programs, and other forms of positive reinforcement.

In addition, suspensions and/or expulsions are available as administrative disciplinary actions depending upon the severity of the misconduct. . . .

67. The School Board contends that Mr. Moore engaged in corporal punishment, which is strictly prohibited, and that he was aware of alternative disciplinary methods but did not use or attempt to use them. Therefore, the School Board contends that Mr. Moore repeatedly violated School Board Rule 6Gx13-5D-107 and that his repeated violations constitute just cause for suspension and dismissal.

68. The evidence fails to demonstrate that Mr. Moore engaged in corporal punishment. As a result, the School Board failed to demonstrate that Mr. Moore violated School Board Rule 6Gx13-5D-107. Hence, the School Board failed to demonstrate just cause for his suspension and dismissal.

Count III, Violence In The Workplace

69. School Board Rule 6Gx13-4-1.08 provides in pertinent part:

Nothing is more important to Dade County Public Schools (DCPS) than protecting the safety and security of its students and employees and promoting a violence-free work environment. Threats, threatening behavior, or acts of violence against students, employees, visitors, guests, or other individuals by anyone on DCPS property will not be tolerated. Violations of this policy may lead to disciplinary action which includes dismissal, . . .

* * *

Dade County Public Schools employees have a right to work in a safe environment. Violence or threat of violence by or against students and employees will not be tolerated.

70. The School Board contends that Mr. Moore's actions of threatening, punching, and hitting students and other acts of physical violence violated School Board Rule 6Gx13-4-1.08. Furthermore, the School Board contends that his repeated violations of the said Rule constitute just cause for suspension and dismissal.

71. The School Board failed to demonstrate that Mr. Moore committed the acts complained of and, therefore, failed to demonstrate that he violated School Board Rule 6Gx13-4.108. Consequently, the School Board failed to demonstrate just cause for Mr. Moore's suspension and dismissal.

Count IV, Responsibilities And Duties

72. School Board Rule 6Gx13-4A-1.21 provides in pertinent part:

I. Employee Conduct

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.

Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

73. The School Board contends that the following actions do not reflect credit upon Mr. Moore or the school system and are, therefore, violations of School Board Rule 6Gx13-4A-1.21: his repeated inappropriate, abusive, and profane language and physical contact with the students; his repeated tardiness, numerous and excessive absences from work and careless supervision of students; his arrest for the criminal activity described in the criminal charges of December 1996; and his

providing false information on his employment application. As a result, the School Board contends that Mr. Moore's repeated violations of School Board Rule 6Gx13-4A-1.21 constitute just cause for suspension and dismissal.

74. The School Board only demonstrated that Mr. Moore violated School Board Rule 6Gx13-4A-1.21 as it relates to his arrest for the criminal activity described in the criminal charges of December 1996 and to his providing false information on his employment application. Hence, the School Board demonstrated just cause for Mr. Moore's suspension and dismissal.

RECOMMENDATION

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

RECOMMENDED that the Miami-Dade County School Board enter a final order:

1. Finding Algernon J. Moore, Jr. in violation of Counts I and IV in accordance with this Recommended Order.
2. Dismissing Counts II and III.
3. Upholding the suspension of Algernon J. Moore, Jr.
4. Dismissing Algernon J. Moore, Jr. from all employment with the Miami-Dade County School Board.

DONE AND ENTERED this 30th day of December 2004, in
Tallahassee, Leon County, Florida.

Errol H. Powell

ERROL H. POWELL
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 December, 2004.

ENDNOTES

^{1/} The School Board was required to submit to the Administrative Law Judge Petitioner's Exhibits numbered 17, 20, and 22-24.

^{2/} Mr. Strasko is also one of Renick's psychologists who was referred to in Finding of Fact numbered 37.

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.