

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-4267  
 )  
ALAN T. POLITE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on January 25, 2005, in Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Pamela Young-Chance, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

For Respondent: Alan T. Polite  
827 Northwest 118th Street  
Miami, Florida 33168

STATEMENT OF THE ISSUE

Whether the Respondent, Alan T. Polite (Respondent), committed the violations alleged and should be disciplined as set forth in the Notice of Specific Charges filed on December 21, 2004.

PRELIMINARY STATEMENT

On November 17, 2004, the School Board of Miami-Dade County, Florida (Petitioner or School District) took action to suspend and initiate dismissal proceedings against the Respondent. The Respondent timely challenged that proposed action and sought an administrative hearing in connection with the allegations raised against him. The case was forwarded to the Division of Administrative Hearings for formal proceedings on November 22, 2004.

An Order Requiring Notice of Specific Charges was filed on December 2, 2004. Subsequently, the Petitioner filed the Notice of Specific Charges that itemized the factual basis for the proposed discipline. More specifically, the Petitioner charged the Respondent violated the School District's "Drug-Free Workplace Policy." Essentially, the Petitioner has a policy that requires employees to submit to drug testing when a supervisor determines that the employee is behaving in an unusual manner. The policy outlines the pertinent steps to require drug testing, and an employee is required to submit a sample as directed by management. The refusal to submit a sample results in the presumption of a positive result.

In this case, the Petitioner alleged that the Respondent refused to acknowledge the drug-testing forms, refused to sign the forms, and refused to submit to the testing. Two failed

tests result in termination of employment. For the Respondent, the Petitioner alleged a second failed test occurred on or about June 8, 2004. When the Respondent's work history and failed results were then reviewed, the Petitioner elected to recommend disciplinary action against the Respondent. The instant case proceeded.

At the hearing, the Petitioner presented testimony from Dr. Henry Crawford, principal at Miami Park Elementary School; Jacqueline Brooks, a school social worker (Miami Park Elementary is one of her assigned schools); Arturo Abin, executive director of the employee assistance program for the Miami-Dade County Public Schools; and Barbara Moss, district director for the Miami-Dade County Public Schools, Office of Professional Standards. The Petitioner requested official recognition of the items identified as Petitioner's Exhibits 1 through 5. That request was granted.

The Petitioner's Exhibits 6 through 24 were received in evidence. The exhibits were received over the Respondent's objection that he did not agree to a lot of the "things in there." Respondent did not dispute the authenticity of the documents, he merely did not agree about what they stated.

The Respondent presented testimony from Charles Kevin Mitchell, an associate minister at Friendship Missionary Baptist Church; and recalled Ms. Moss who had previously

testified. The Respondent did not offer any documents in evidence. The letter read into the record by the associate minister (presumably from the pastor at the church) was not offered into evidence. The Petitioner did not oppose the reading of the letter.

The transcript of the proceeding was filed with the Division of Administrative Hearings on February 22, 2005. The parties were granted 10 days within which to file proposed recommended orders. The Petitioner timely filed a Proposed Recommended Order that has been fully considered in the preparation of this Recommended Order. The Respondent did not file a proposal.

#### FINDINGS OF FACT

1. At all times material to the allegations of this case, the Petitioner was the state entity charged with the responsibility of operating and supervising the public schools within the Miami-Dade County, Florida School District. Such responsibility includes the personnel matters such as the one at hand.

2. At all times material to the allegations of this case, the Respondent was employed by the School District as a custodian assigned to work at Miami Park Elementary School.

3. On or about December 11, 2003, the Respondent attended a staff meeting conducted at Miami Park Elementary

School. At that time the Petitioner's "Drug-Free Workplace Policy" was distributed and reviewed. The Respondent does not deny attending the meeting and does not dispute the existence of the Petitioner's policy regarding drugs and alcohol in the workplace.

4. On February 20, 2003, after the Respondent's supervisor observed him behaving in an unusual manner, the Respondent was asked to submit to a drug and alcohol test. The Respondent was uncharacteristically disruptive, loud, and confrontational. When asked to take a drug/alcohol test, the Respondent refused unless the supervisor also agreed to submit himself for testing.

5. The Respondent was called to the office and provided with the pertinent forms for drug/alcohol testing. The Respondent refused to acknowledge the forms, refused to sign the forms, and refused to submit himself to the testing.

6. After the refusal was deemed a positive result, the Respondent was prohibited from returning to work until he complied with the return-to-duty requirements of the "Drug-Free Workplace Policy." The procedures and directives followed the School District policy.

7. On February 28, 2003, a conference-for-the-record (CFR) was conducted to address the refusal to take the drug/alcohol test. At that time the Respondent was given a

referral to the Employee Assistance Program (EAP) and was informed that his progress and participation with the EAP would be monitored by the Petitioner's Office of Professional Standards (OPS).

8. The OPS is responsible for tracking employees so that the Petitioner can be assured that the "Drug-Free Workplace Policy" is being followed.

9. On or about March 19, 2003, the Respondent entered the EAP.

10. On April 10, 2003, the Respondent agreed to subject to unannounced testing for drug/alcohol use. For 60 months following his return to duty, the Respondent agreed to submit to testing on a random basis. It was anticipated that there would be no fewer than six screenings within the first 12 months.

11. Based upon the foregoing, the Respondent was granted permission to return to work and did so on or about April 11, 2003.

12. On June 8, 2004, the Respondent was selected for a random, unannounced follow-up test. The Respondent presented for testing at the prescribed location (an approved laboratory). The alcohol test administered to Respondent produced a positive result. The Respondent does not dispute the result of the test. The Respondent did not dispute that a

consumption of alcohol caused the result.

13. On June 22, 2004, another CFR was conducted in the OPS to review the test result with Respondent. At that time, based upon a complete review of the Respondent's work record, the OPS recommended disciplinary action be taken against the Respondent for a second violation of the "Drug-Free Workplace Policy."

14. There is no allegation that the Respondent consumed alcohol while on the job at Miami Park Elementary School on June 8, 2004. There is no allegation that on June 8, 2004, the Respondent exhibited any outward sign that he was performing his duties under the influence of alcohol.

15. The Respondent attends church at the Friendship Missionary Baptist Church. The Respondent makes meaningful contributions to the church and is perceived as a sober role model among the congregants.

16. If the Respondent demonstrates he can remain sober for a period of five years, and show appropriate work history for that time frame, he may be eligible to be rehired by the Petitioner.

#### CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.569, 120.57(1), and 1012.22(1),

Fla. Stat. (2004).

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

19. In this case, the evidence supports the conclusion that the Respondent refused to submit for drug and alcohol testing on or about February 20, 2003, that resulted in a positive result by presumption and then failed (by test result) a second testing on or about June 8, 2004. With two failed results, the OPS was required to recommend disciplinary action. The "Drug-Free Workplace Policy" provides that persons who violate the standards "who refuse or cannot be assisted by rehabilitation" shall be dismissed.

20. In this case the Respondent cannot be dismissed absent "just cause." The UTD union contract (that pertains to this Respondent) specifies termination for "just cause." It does not define that term. It is concluded that the failure to comply with the School Board's policy is just cause for termination. Further, it is concluded that pursuant to the union contract for this employee, termination is appropriate under the circumstances of this case.

21. The OPS made the recommendation to terminate the Respondent's employment with the School District based on the entirety of the Respondent's job performance. Thus, the



Petitioner fairly considered the principles of progressive discipline appropriate to this case (also a consideration set forth by union contract). The two failed test results were only a part of that decision. In fact, the Respondent's employment record established past disciplinary actions that support the conclusion that this Respondent had long-standing issues. Specifically, the Respondent was warned no fewer than 5 times, both verbally and with written reprimands, regarding his failures to follow School District rules. On one occasion Respondent received a 30-workday suspension.

22. It is concluded that the Respondent violated the Petitioner's "Drug-Free Workplace Policy" and was insubordinate in refusing to take the test when directed to do so on February 20, 2003. Accordingly, when considered along with the positive test result from the test conducted on June 8, 2004, the Petitioner has established just cause for the termination of this employee.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent be terminated from his employment with the School District. The suspension without pay must be sustained.

DONE AND ENTERED this 27th day of April, 2005, in  
Tallahassee, Leon County, Florida.



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J. D. PARRISH  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of April, 2005.

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.