STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-3554
	)	
ALSAVION SMITH,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted on June 8, 2006, by Florence Snyder Rivas, a duly-designated Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH) by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
Whitelock & Associates, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316

For Respondent: Mark F. Kelly, Esquire
Kelly & McKee, P.A.
1718 East Seventh Avenue, Suite 301
Post Office Box 75638
Tampa, Florida 33675-0638

STATEMENT OF THE ISSUE

At issue is whether there is just cause for Petitioner Broward County School Board (Petitioner or School Board) to terminate the employment of Respondent, Alsavion Smith's

(Respondent) by reason of immorality and moral turpitude as alleged in the Administrative Complaint dated August 24, 2005 (Complaint).

PRELIMINARY STATEMENT

By letter dated August 24, 2005, Superintendent of Schools, Dr. Frank Till (Till), acting on behalf of Petitioner, advised Respondent that he was recommending Respondent's suspension without pay pending dismissal from employment as a schoolteacher. Thereafter Petitioner filed its Complaint alleging just cause for termination based upon Respondent's alleged immorality and moral turpitude in connection with unlawful possession of marijuana.

Respondent timely asserted his right to an administrative hearing to challenge the termination. On September 27, 2005, the case was referred to DOAH and was assigned to ALJ Michael Parrish. Following discovery, the parties' moved jointly for an order closing file, which motion was granted by ALJ Parrish on January 31, 2006.

On March 29, 2006, the parties moved to re-open the case, which motion was granted by ALJ Parrish. ALJ Parrish set a final hearing for June 8-9, 2006. The case was transferred to the undersigned on or about June 1, 2006.

The identity of witnesses, exhibits and attendant stipulations and rulings are contained in the one-volume

transcript of the final hearing, which was filed on June 27, 2006. Thereafter, the parties moved for and were granted an enlargement of time until July 28, 2006, to file proposed recommended order(s). The parties represented that they had personal plans, including vacation, as well as professional commitments which rendered it impossible to do thorough proposed recommended orders absent the additional time requested. The parties timely submitted their Proposed Recommended Orders, which have been carefully considered. Pursuant to applicable DOAH rules and policy, the Recommended Order was due to be released on August 28, 2006. The Recommended Order is regrettably tardy due to the undersigned's previously scheduled August vacation days. References to Sections are to the Florida Statutes (2005), except as otherwise specified. References to Rules are to the Florida Administrative Code (2005).

FINDINGS OF FACT

1. Petitioner is the entity constitutionally authorized to operate, control, and supervise the Broward County public school system.

2. Respondent was, at relevant times, employed by Petitioner as a teacher pursuant to an annual contract. During the 2004-2005 school year he was assigned to Plantation Middle School.

3. The events giving rise to this case occurred on March 10, 2005. Narcotics officers (officers) employed by the Broward County, Florida Sheriff's Office (BSO) had received information that a teacher who lived on the third floor of an apartment complex located at 1442 Avon Lane in north Fort Lauderdale (apartment complex), was in possession of marijuana and also selling marijuana out of his apartment. Possession and sale of marijuana is illegal in Florida.

4. Upon investigation, BSO officers learned that Respondent was a teacher and lived on the third floor in Unit 638 (the apartment) at the apartment complex. As the investigation went forward, the officers knocked on the door of the apartment. At that time, the odor of marijuana was sufficiently strong that it could be smelled in the hallway outside the apartment. The knock was answered by an individual identified in the record as Anderson Carrington (Carrington). Carrington opened the door and admitted the officers. The apartment's exterior door, through which Carrington admitted the officers, opened directly on to the living room/dining area of the apartment. The dining room table was located in this area and was immediately visible to anyone entering. An individual identified in the record as Vveldress Ingram (Ingram) was seated at the dining room table. Approximately two pounds of marijuana was located on the

dining room table, together with drug paraphernalia. The paraphernalia included scales and "baggies." Coupled with the amount of marijuana present, such paraphernalia suggested that marijuana was being sold out of the apartment. The officers thereupon arrested Carrington and Ingram, and undertook to secure the premises to assure the safety of the officers and other individuals in or near the premises. The officers summoned back-up, and shortly thereafter, additional BSO officers and a supervisor arrived on the scene, all in marked patrol cars.

5. At the precise moment the officers were admitted to the apartment, Respondent was in his bedroom. The bedroom was immediately adjacent to the living room/dining area. Respondent soon emerged from the bedroom and acknowledged to the officers that the apartment was leased to him. He further informed the officers that he lived there with three individuals, whom he variously characterized as "roommates" or "guests." These individuals are Carrington, Roderick Simeon, and his younger brother James Simeon. James Simeon was known by Respondent to be a juvenile. Respondent further acknowledged that he was aware that Carrington and the juvenile had been selling marijuana out of his apartment; that a delivery of marijuana for resale from the apartment had been made that day; and that approximately seven grams of marijuana

were in his dresser drawer in his bedroom and was for his personal use. Respondent was thereupon arrested, and asked to sign a consent form giving BSO permission to search the apartment. Respondent voluntarily did so.

6. The events surrounding Respondent's arrest, including Respondent's removal from the apartment complex in a BSO cruiser, were witnessed by members of the public as a crowd had gathered in the parking lot of the apartment complex to watch, apparently drawn by the presence of first one, and thereafter at least two more BSO vehicles. Word of the arrest, including the grounds for the arrest, spread quickly through the neighborhood, and some individuals who came to watch became unruly. At least one such person was arrested.

7. At all relevant times, Respondent was treated in a professional and courteous manner by BSO officers. No credible, persuasive evidence to the contrary was provided. Respondent offered only his own testimony in support of his claim to have been coerced, threatened, or mistreated by BSO officers. Respondent's testimony is not credited. Based upon the entire record; which includes prior inconsistent statements under oath, as well as Respondent's demeanor while testifying, including his nervousness on direct examination and his evasiveness on cross-examination, it is specifically determined that Respondent was not threatened or coerced by

BSO officers on March 10, 2005. It is further determined that Respondent did in fact make the above-noted admissions to the officers. Four officers testified from personal knowledge concerning events relevant to this case. The testimony provided by the officers is, in all material respects, persuasive and is credited by the factfinder.

8. On March 14, 2005, Respondent delivered to Petitioner's duly-designated representative a so-called Self Reporting Form. Pursuant to Petitioner's policy, a Self Reporting Form must be submitted promptly by any teaching professional who has been arrested. In his Self Reporting Form, Respondent made no reference to threats, coercion, or other mistreatment by the BSO officers, giving rise to an inference that Respondent suffered no threats, coercion, or other mistreatment.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties and the subject matter in this case pursuant to Sections 120.569, 120.57(1), and 1012.33, Florida Statutes (2006).

10. In his capacity as superintendent of schools, Till has the authority to recommend the suspension and dismissal of employees pursuant to Subsection 1012.27(5), Florida Statutes. The School Board has the authority to act on such recommendations of the superintendent and to dismiss school

employees pursuant to Sections 1001.42(5) and 1012.22(1)(f), Florida Statutes.

11. Petitioner seeks to dismiss Respondent from his employment as a teacher and bears the burden of proof by a preponderance of the evidence. See Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. 3rd DCA 1990). Dismissal must be based on 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. § 1012.33(1)(a), Fla. Stat. Because just cause is not limited to the offenses specified in the foregoing Section, school boards have discretion to determine what actions constitute just cause for dismissal. Carl B. Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2nd DCA 1994). Here, Petitioner alleged and proved the material allegations of the Complaint by preponderant, persuasive evidence. Under all the facts and circumstances, there is just cause to terminate Respondent's employment based upon the grounds of immorality and moral turpitude.

12. As previously noted, Respondent stipulated that a determination that the material allegations of the Complaint were, in fact, true, would constitute proof by a preponderance

of evidence of immorality and moral turpitude and would, therefore, provide just cause to terminate his employment. Even without such stipulation, there is just cause for termination on the basis of immorality and moral turpitude.

13. Florida Administrative Code Rule 6B-4.009 pertains to criteria for the dismissal of instructional personnel and provides, in pertinent part:

> (2) Immorality is defined 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 individuals' service in the community.
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> * * *
>
> (6) Moral turpitude is 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 and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

14. In McNeill v. Pinellas County School Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996), the court said, "[I]n order to dismiss a teacher for immoral conduct the factfinder must conclude: a) that the teacher engaged in conduct inconsistent with the standards of public conscience and good morals, and b) that the conduct was sufficiently notorious so as to [1] disgrace the teaching profession *and* [2] impair the teacher's

service in the community." (italics in original). Here, there is ample evidence that Respondent's conduct was contrary to standards of public conscience and good morals. Respondent was in possession of marijuana in his apartment for--by his own admission--personal use. He was aware that his juvenile roommate, as well as an adult roommate, sold marijuana from his apartment. At least some members of the community were aware of the illegal activity in Respondent's apartment prior to March 10, 2005, and many others became aware of the charges filed by BSO following its investigation on that date, all to the detriment of the reputation of teaching professionals. Respondent's actions set forth above were sufficiently notorious to result in public disgrace to the teaching profession and to impair Respondent's service in the community. The evidence is sufficient to establish just cause for termination based upon immorality.

15. Likewise the evidence is sufficient to establish just cause for termination based upon moral turpitude. In possessing marijuana for personal use and condoning and facilitating the sale of marijuana out of his residence, Petitioner engaged in illegal behavior which evidenced 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 statue fixes the moral turpitude.

16. In Adams v. Professional Practices Council, 406 So. 2d 1170, 1171 (Fla. 1st DCA 1981), the court stated, that when considering whether a teacher is guilty of immorality or an act involving moral turpitude, it must be remembered that ". . . teachers are traditionally held to a high moral standard in a community."

17. It is not necessary for a teacher to be convicted of a crime in order to be terminated from employment by his/her local school district or disciplined by the state on the basis of immorality or moral turpitude. Walton v. Turlington, 444 So. 2d 1082 (1st DCA 1984). In that case, a teacher's employment was terminated and thereafter his teaching certificate revoked upon a finding that the teacher had been in possession of marijuana plants, and for that reason was guilty of immorality and moral turpitude.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law it is recommended that Petitioner enter a final order terminating Respondent's employment as a teacher.

DONE AND ENTERED this 5th day of September, 2006, in Tallahassee, Leon County, Florida.

Florence Snyder Rivas

FLORENCE SNYDER RIVAS
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 5th day of September, 2006.

COPIES FURNISHED:

Charles T. Whitelock, Esquire
Whitelock & Associates, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316

Mark F. Kelly, Esquire
Kelly & McKee, P.A.
1718 East Seventh Avenue, Suite 301
Post Office Box 75638
Tampa, Florida 33675-0638

Dr. Franklin L. Till, Jr., Superintendent
Broward County School Board
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301-3125

Honorable John L. Winn
Commissioner of Education
Department of Education
Turlington Building, Suite 1514
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel
Department of Education
1244 Turlington Building
325 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.