

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 07-2590
)
DALE W. REICHARD,)
)
 Respondent.)

)

RECOMMENDED ORDER

This matter was referred to the Division of Administrative Hearings (DOAH) on June 11, 2007. Pursuant to the parties' request, no hearing was conducted. As addressed herein, this Recommended Order is based upon a Stipulation of Facts filed on February 29, 2008.

APPEARANCES

For Petitioner: Ned N. Julian, Jr., Esquire
Seminole County School Board
400 East Lake Mary Boulevard
Sanford, Florida 32773-7127

For Respondent: Thomas Johnson, Esquire
Chamblee, Johnson & Haynes, P.A.
510 Vonderburg Drive, Suite 200
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STATEMENT OF THE ISSUE

The issue in the case is whether just cause exists for the termination of Respondent Dale W. Reichard's (Respondent)

employment under a professional services contract with
Petitioner Seminole County School Board (Petitioner).

PRELIMINARY STATEMENT

By letter dated May 10, 2007, Seminole County School District Superintendent Bill Vogel (Dr. Vogel) notified the Respondent that Dr. Vogel intended to recommend to the Petitioner that the Respondent's employment be terminated. By letter dated May 24, 2007, the Respondent challenged the termination and requested a formal administrative hearing. The Petitioner thereafter filed a Petition for Termination with the DOAH on June 11, 2007.

An Initial Order was entered, which required the parties to provide suggested dates for hearing. Based upon the response to the Initial Order, the formal hearing was scheduled for July 26, 2007.

On July 10, 2007, the Respondent filed an Unopposed Motion for Continuance based on the existence of unresolved criminal charges related to matters at issue in this proceeding. The hearing was rescheduled for September 19, 2007.

On August 30, 2007, the Petitioner filed a Motion for Continuance based on the failure to complete discovery due to the criminal charges. The motion was not opposed, and the hearing was rescheduled for November 16, 2007.

By letter dated November 1, 2007, the Petitioner advised the Administrative Law Judge (ALJ) that the hearing should be cancelled, that the parties would submit stipulated facts in lieu of evidence, and that a recommended order should be issued on the basis of the stipulation. A telephone conference was conducted on November 14, 2007, to address the request and to discuss whether, in light of the apparent lack of disputed facts, jurisdiction should remain with DOAH. During the conference, both parties affirmed their interest in having the matter proceed via a recommended order from DOAH.

By Order Canceling Hearing dated November 15, 2007, the hearing was cancelled, and the parties were directed to establish deadlines for filing the stipulation of facts and proposed recommended orders.

The Petitioner filed a Stipulation of Facts and an Amended Stipulation of Facts on January 3, 2008, but neither document was executed by counsel for the Respondent.

The Petitioner filed a Motion for Abatement on January 10, 2008, advising of the death of counsel for the Respondent. Substitute counsel for the Respondent filed Notices of Appearance on January 15, 2008.

A telephone conference was conducted on February 8, 2008, and revised deadlines were established for filing an executed

stipulation and proposed recommended orders. Various extensions to deadlines were granted upon the agreement of the parties.

An executed Stipulation of Facts was filed on February 29, 2008. Proposed Recommended Orders were filed on March 20, 2008.

The Findings of Fact set forth herein are based in their entirety on the executed Stipulation of Facts filed on February 29, 2008. The inclusion of the stipulated facts within this Recommended Order should not be deemed to indicate that the ALJ has determined that sufficient evidence exists to support the facts to which the parties have stipulated.

FINDINGS OF FACT

1. Dr. Vogel is the district school superintendent of the School District of Seminole County, Florida.

2. Prior to his current employment, he was employed as the district superintendent in St. Lucie County, Florida for six and one-half years.

3. Prior to his employment by the School Board of St. Lucie County, Florida, he was employed as assistant superintendent for personnel and administrative services by the School Board of Osceola County, Florida, for 17 years.

4. The Respondent is employed by the Petitioner at Oviedo High School on a professional service contract, pursuant to the provisions of Subsection 1012.33(3), Florida Statutes.

5. The Respondent is employed as "instructional personnel," as defined by Subsection 1012.01(2)(a), Florida Statutes.

6. The employment relationship between the Respondent and the Petitioner is established pursuant to the state law of Florida and the collective bargaining agreement between the Seminole Education Association, Inc., and the Petitioner. The Respondent's employment can be terminated for just cause only.

7. The Respondent was arrested at Oviedo High School on May 9, 2007, on a felony warrant issued by the Circuit Court of Volusia County, Florida, for the offense of possession of cocaine.

8. The Respondent's arrest resulted from a May 2, 2007, visit to the Respondent's residence by undercover investigators employed by the Volusia County Sheriff's Department. The Respondent was cooperative with the investigators and readily admitted that he was in possession of cocaine and gave the cocaine to them. An ensuing search of the Respondent's residence resulted in the investigators finding approximately 12 grams of material which field-tested presumptive positive for cannabis.

9. The Respondent was charged in the Circuit Court of Volusia County, Florida, with possession of cocaine under information 2007-01526CFA WS.

10. Subsequent to the Respondent's arrest at Oviedo High School on May 9, 2007, Dr. Vogel, as district school superintendent, placed the Respondent on suspension with pay and recommended to the Petitioner that the Respondent be suspended without pay pending termination.

11. By letter of May 10, 2007, Dr. Vogel advised the Respondent that he would recommend to the Petitioner that the Respondent be terminated for misconduct in office.

12. Dr. Vogel's recommendation for suspension without pay and termination was based on information provided to him by Robert Lundquist (Mr. Lundquist), the principal of Oviedo High School, and John Reichert, who is the executive director for Human Resources.

13. By Petition for Termination, filed with the DOAH, the Respondent was further charged with conduct unbecoming an employee of the Petitioner by reason of his possession of cocaine and possession of marijuana.

14. Proceedings for termination were abated pending resolution of the criminal charges then pending in the Circuit Court of Volusia County, Florida.

15. The Respondent entered into a Substance Abuse Offender Referral Agreement with the Office of the State Attorney, Seventh Judicial Circuit, which provided that the criminal

prosecution would be dismissed if the Respondent successfully complied with the terms and conditions therein prescribed.

16. The Respondent successfully completed his obligations under the Substance Abuse Offender Referral Agreement, which included counseling and random drug testing. The criminal prosecution was dismissed via a nolle prosequi of the charge entered on August 3, 2007.

17. Mr. Lundquist has been the principal of Oviedo High School commencing with the 1996-1997 school year.

18. Mr. Lundquist is the administrative head of Oviedo High School.

19. At the time of the incident herein described, the Respondent held the position of teacher of American Government and chairman of the Social Studies Department at Oviedo High School. In addition, the Respondent was the boys' volleyball coach.

20. The Respondent was considered to be a good teacher by Mr. Lundquist.

21. Three weeks prior to the Respondent's arrest, Mr. Lundquist had a conference with the Respondent in which Mr. Lundquist communicated that he had heard through the Seminole County Sheriff's Department that there was a possibility that the Respondent was involved in drug use.

22. Mr. Lundquist advised the Respondent that, if the information Mr. Lundquist had received was correct, the Respondent should stop his drug use and get help.

23. Later that same day, the Respondent contacted the Employee Assistance Program (EAP) to set up an appointment. The original appointment was for May 2, 2007. However, the Respondent was contacted by EAP and informed that the appointment had been changed to May 3, 2007.¹

24. Mr. Lundquist has received no negative communications or comments from teachers regarding the Respondent.

25. Several teachers who were members of the Respondent's department, and several teachers that observed the Respondent's arrest, asked Mr. Lundquist about the matter.²

26. Several students also had questions about the matter of the Respondent's arrest. Mr. Lundquist did not respond to the students.

27. Mr. Lundquist has received no communications, either written or oral, from parents regarding the matter.

28. To Mr. Lundquist's knowledge no information about the matter was published in local papers or broadcast by local radio or television stations.

29. Mr. Lundquist confirms that the Respondent's performance as department chair, classroom teacher, and boys' volleyball coach during Mr. Lundquist's tenure as principal of

Oviedo High School has met all performance expectations of the Petitioner and that the Respondent has continuously met the assessment criteria as specified in Section 1012.34, Florida Statutes, and as found in the official agreement between the Seminole Education Association, Inc., and the Petitioner.

30. Mr. Lundquist believes that a teacher's role goes beyond what is taught in the classroom on a daily basis.

31. Mr. Lundquist believes that a teacher has an obligation to his or her colleagues, students, students' parents, and the community to uphold moral standards.

32. Mr. Lundquist believes that a teacher is expected by students and the community to be a person of integrity and to display good sound judgment and moral character, both in school and in their community.

33. Mr. Lundquist's trust in the Respondent has been destroyed by the Respondent's use and possession of cocaine and marijuana.

34. Mr. Lundquist believes that the Respondent's use and possession of controlled substances, cocaine and marijuana, constitutes a betrayal of the trust reposed in the Respondent by Mr. Lundquist regardless of the fact that the Respondent voluntarily admitted to law enforcement that he used and possessed cocaine and marijuana at the time of the consent search of his home.

35. Mr. Lundquist believes that the Respondent's conduct would diminish his effectiveness in the classroom and that it would be an error in judgment to place him back in the classroom.

36. Mr. Lundquist believes that he can no longer trust the Respondent to supervise students involved in an extracurricular activity, e.g., volleyball, especially in light of Mr. Lundquist's belief that the Respondent apparently ignored the "heads-up" that Mr. Lundquist gave him during their conversation about what Mr. Lundquist had heard from law enforcement about the Respondent's suspected drug use.

37. Dr. Vogel is aware that the criminal charge against Respondent was dismissed upon the Respondent's completion of a pretrial diversion program.

38. Dr. Vogel believes that the Respondent's effectiveness as a role model for students was destroyed by his admitted criminal conduct and that a teacher's behavior extends beyond the classroom and the teacher's school's campus.

39. Dr. Vogel believes that he can no longer trust the Respondent to be in presence of students, either as a teacher or a coach, because he can no longer serve as an effective role model for students.

40. Dr. Vogel's recommendation for suspension without pay and termination is solely based on the nature of the conduct, the Respondent's arrest for possession and use of cocaine.

41. Dr. Vogel acknowledges that he has received no complaints regarding the Respondent from teachers, students, or parents; that he is aware of no publicity regarding the Respondent's arrest; and that he is aware that the Respondent's performance as a teacher and department chair was satisfactory.

42. It is Dr. Vogel's professional belief that a teacher who possesses and uses cocaine can no longer serve as a positive role model for students and, thus, is no longer effective as a teacher.

43. The Respondent was arrested along with a friend in 1981 for possession of marijuana.

44. The Respondent participated in a pre-trial diversion type plan through the Orange County, Florida, court system, and the charge was ultimately dismissed upon his completion of the program.

45. The Respondent did not acknowledge the 1981 arrest for marijuana on his application for employment with the Petitioner because he believed that the charge had been expunged or sealed.³

46. The Stipulation of Facts included expressions of support for the Respondent by various colleagues which are set forth verbatim as follows:

a. Diana N. Cabana has been a teacher for 10 years, during which Dale Reichard was the Department Chair for Social Studies, and is aware of the reasons for Mr. Reichard's termination. Ms. Cabana describes Mr. Reichard as a colleague and friend, who has also been an excellent mentor. In addition to being a colleague of Mr. Reichard, Ms. Cabana is the parent of two students taught by Mr. Reichard, and believes that he was instrumental in their development both as students, and as citizens active in the community. Ms. Cabana further describes Mr. Reichard as an excellent teacher, and stated her sincere hope that he would be allowed to complete his teaching career.

b. Jean Davis has been a colleague of Mr. Reichard for 15 years, during which time Mr. Reichard was also the volleyball coach of Ms. Davis' son. Ms. Davis is aware of the reasons for Mr. Reichard's termination. Ms. Davis describes Mr. Reichard as an individual worthy of appreciation from both the school system and parents for his diligence and hard work. Ms. Davis states that Mr. Reichard is highly motivated and a self-starter who encourages students to get involved in their school activities, such as homecoming and powder puff football, as well as clubs and sports. According to Ms. Davis, Mr. Reichard has established a solid reputation as a highly regarded teacher and coach. Parents viewed Mr. Reichard as a role model, instilling sportsmanship, building confidence, and motivating students to congratulate the other team with a positive attitude - win or lose. In short, Ms. Davis believes that Mr. Reichard has clearly demonstrated through his job performance and dedication that he is an asset to the Seminole County School District.

c. Joan Stone has been a colleague of Mr. Reichard for approximately 20 years, and she is aware of the reasons for his termination. Ms. Stone describes Mr. Reichard as very enthusiastic and states that his attitude made an impact on the social studies department at Oviedo High School. According to Ms. Stone, Mr. Reichard had a great way with the students, and many of his past students would be glad to tell you that he was and still is their all-time favorite teacher. Ms. Stone stated that Mr. Reichard's keen interest in his subject--American Government --influenced his students who developed their own interest in politics. Many of the students registered to vote as a result of his encouragement. Finally, Ms. Stone states that Mr. Reichard's presence at Oviedo High School is definitely missed.

d. Mary Ellen Woods first became acquainted with Mr. Reichard in 1985 when he was placed in her classroom as a senior intern from the University of Central Florida. According to Ms. Woods, it was quickly apparent that Mr. Reichard was no ordinary intern in that his depth of knowledge and enthusiasm for the subject he was teaching far surpassed any other intern she had in her classroom before or after that time. Ms. Woods took pride in Mr. Reichard's development over the years, including when Mr. Reichard was awarded Teacher of the Year and was appointed Social Studies Department Chairman. Ms. Woods also states that Mr. Reichard was not only an outstanding classroom teacher but a dedicated coach as well. He mentored numerous young people on the volleyball court and soccer field. Ms. Woods worked with Mr. Reichard in coaching powder puff football for many years, and his rapport with students was superb both in the classroom and through athletics. According to Ms. Woods, Mr. Reichard has created countless active citizens by inspiring an interest in this

country's democratic process as a teacher of American Government. Mr. Reichard made sure the young people in his class had the opportunity to register to vote thus establishing a lifelong habit of active participation in the political process. Mr. Reichard also inspired young people to have confidence in themselves through his coaching. According to Ms. Woods, Mr. Reichard was an integral part of the Oviedo High School family. He always had a smile for everyone and was universally liked and respected by the entire faculty and staff--and still is. Mr. Reichard was a teacher that everyone knows because his students spoke so highly of him people made a point to see who he was. He generously helped anyone who needed it, and assisted many new teachers in getting acclimated to the high school environment. He was a good friend to those who needed an ear. He has always been a good friend to me and many others. Finally, Ms. Woods states that Mr. Reichard is the most naturally gifted teacher she have ever known, and that she sincerely hopes he will be permitted to share that gift once more.

CONCLUSIONS OF LAW

47. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2007).

48. The Petitioner has the burden of establishing the facts of the case by a preponderance of the evidence sufficient to warrant termination of the Respondent's employment. McNeill 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). Because the statute and rules providing

grounds for terminating the Respondent's employment are penal in nature, they must be construed in favor of the employee.

Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992); Lester v. Department of Professional Regulations, 348 So. 2d 923 (Fla. 1st DCA 1977). In this case, the burden has not been met.

49. The letter from Dr. Vogel to the Respondent dated May 10, 2007, advises that the basis for the proposed termination is "misconduct in office" and cites the requirements of Florida Administrative Code Rules 6B-1.001 and 6B-1.006.

50. Florida Administrative Code Rule 6B-4.009(3) provides as follows:

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.

51. Florida Administrative Code Rule 6B-1.001 states as follows:

6B-1.001 Code of Ethics of the Education Profession in Florida.

(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. (Emphasis supplied)

52. Florida Administrative Code Rule 6B-1.006 provides as follows:

6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.

(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.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

(c) Shall not unreasonably deny a student access to diverse points of view.

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.

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

(f) Shall not intentionally violate or deny a student's legal rights.

(g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

(h) Shall not exploit a relationship with a student for personal gain or advantage.

(i) Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

(4) Obligation to the public requires that the individual:

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated.

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

(c) Shall not use institutional privileges for personal gain or advantage.

(d) Shall accept no gratuity, gift, or favor that might influence professional judgment.

(e) Shall offer no gratuity, gift, or favor to obtain special advantages.

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

(b) Shall not on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition if otherwise qualified, or social and family background deny to a colleague professional benefits or advantages or participation in any professional organization.

(c) Shall not interfere with a colleague's exercise of political or civil rights and responsibilities.

(d) Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

(e) Shall not make malicious or intentionally false statements about a colleague.

(f) Shall not use coercive means or promise special treatment to influence professional judgments of colleagues.

(g) Shall not misrepresent one's own professional qualifications.

(h) Shall not submit fraudulent information on any document in connection with professional activities.

(i) Shall not make any fraudulent statement or fail to disclose a material fact in one's own or another's application for a professional position.

(j) Shall not withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.

(k) Shall provide upon the request of the certificated individual a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.

(l) Shall not assist entry into or continuance in the profession of any person known to be unqualified in accordance with these Principles of Professional Conduct for the Education Profession in Florida and other applicable Florida Statutes and State Board of Education Rules.

(m) Shall self-report within forty-eight (48) hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-

report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or Nolo Contendere for any criminal offense other than a minor traffic violation within forty-eight (48) hours after the final judgment. When handling sealed and expunged records disclosed under this rule, school districts shall comply with the confidentiality provisions of Sections 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.

(n) Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(o) Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(p) Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice.

(q) Shall, as the supervising administrator, cooperate with the Education Practices Commission in monitoring the probation of a subordinate. (Emphasis supplied)

53. The facts to which the parties have stipulated fail to establish that the Petitioner has committed misconduct in office as defined by Florida Administrative Code Rule 6B-4.009(3).

54. Florida Administrative Code Rule 6B-1.001(3) requires that an educator strive "to achieve the highest degree of

ethical conduct" in order to maintain the respect and confidence of one's colleagues." The facts to which the parties have stipulated fail to establish that the Petitioner has committed a violation of the cited rule.

55. Although Mr. Lundquist and Dr. Vogel have concluded that the Respondent's behavior was unethical and sufficient to cause a loss of trust and confidence in the Respondent, the stipulated facts fail to include sufficient information to support a determination that the conclusions are reasonable.

56. The mere fact of drug use or possession, absent additional information, is insufficient to reasonably lead to a conclusion that the Respondent was acting unethically in this matter.

57. The fact that the principal warned the Respondent that the law enforcement community suspected the Respondent was involved with drugs and encouraged him to seek assistance suggests that such involvement alone is so egregious as to warrant termination of employment.

58. There is no evidence or stipulated fact that establishes that the matter has been the subject of any negative reaction by anyone other than the principal and the superintendent. The conclusory opinions offered by each to support the proposed termination are unsupported by evidence and insufficient to warrant termination. MacMillan v. Nassau County

School Board, 629 So. 2d 226, 230 (Fla. 1st DCA 1993); McNeill v. Pinellas County School Board, 678 So. 2d 476, 478 (Fla. 2nd DCA 1996).

59. As to other provisions of the referenced administrative rules presumably applicability to this matter, the Petitioner has failed to establish that the Respondent did not disclose a material fact on his job application, as required by Florida Administrative Code Rule 6B-1.006(5)(i), because the stipulated facts fail to establish what information was sought by the relevant application question.

60. The Petitioner has failed to establish that the Respondent did not comply with the requirement that he report his arrest within the 48-hour period required by Florida Administrative Code Rule 6B-1.006(5)(m).

61. Careful review of the remaining requirements of the cited rules indicates that no others are applicable to the matter at hand.

62. The Petition for Termination stated that the Respondent's conduct "constitutes just cause for suspension and termination" pursuant to Subsection 1012.13(6)(a), Florida Statutes, and to "Article VIII, Section F, Agreement Between the Seminole Education Association, Inc. and The School Board of Seminole County, Florida."

63. The Stipulation of Facts did not include sufficient information related to the collective bargaining agreement to ascertain the requirements of the contract, and this Recommended Order does not include any consideration of such requirements.

64. Subsection 1012.13(6)(a), Florida Statutes, does not exist. The correct citation is presumably Section 1012.33, Florida Statutes (2007), which, in relevant part, provides as follows:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), 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.

* * *

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a) . . . (Emphasis supplied)

65. As addressed previously herein, the stipulated facts fail to establish that the Respondent's actions constitute misconduct in office.

66. The Petition for Termination filed against the Respondent also stated that the basis for the proposed termination is "conduct unbecoming an employee of The School Board of Seminole County, Florida" and contains citations to the same administrative rules as the May 10 letter. The cited rules contain no reference to "conduct unbecoming" an employee of a school board, and the phrase is otherwise undefined in the Petition for Termination.

67. The phrase "conduct unbecoming" a public employee has been defined as behavior that falls below a "reasonable standard of conduct" prescribed by the employer. Seminole County Board of County Commissioners v. Long, 422 So. 2d 938 (Fla. 5th DCA 1982).

68. The facts to which the parties have stipulated fail to establish that the Petitioner has a standard of conduct which requires termination of employment of a teacher arrested for personal drug possession or use at a private residence. The Petitioner has failed to establish that the Respondent's behavior in this matter constitutes conduct unbecoming an employee of the school board.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petitioner enter a final order reinstating the employment of the Respondent, Dale W. Reichard.

DONE AND ENTERED this 2nd day of June, 2008, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of June, 2008.

ENDNOTES

^{1/} The stipulated facts do not indicate whether the Respondent kept any appointment with the EAP or participated in any program offered through the EAP.

^{2/} The stipulated facts do not specifically indicate whether Mr. Lundquist responded to the teachers' inquiries, or if so, what information the teachers were provided.

^{3/} The Stipulation of Facts does not include specific detail regarding the inquiry set forth on the employment application. The extent to which any disclosure was required by the application is unclear.

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.