

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-0467
	)	
MICHELLE S. MCGHEE,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on January 12, 2009, in Sanford, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Matthew Haynes, Esquire  
Chamblee, Johnson & Haynes, P.A.  
510 Vonderburg Drive, Suite 200  
Brandon, Florida 33511

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent's employment should be terminated by Petitioner.

### PRELIMINARY STATEMENT

On December 19, 2007, Bill Vogel, Superintendent of Seminole County Public Schools, advised Respondent, Michelle S. McGhee, via letter that Vogel intended to recommend to Petitioner, Seminole County School Board, that Respondent's employment be terminated. Respondent timely filed a response to the letter, asking for a formal administrative hearing. Petitioner then filed a Petition for Termination with the Division of Administrative Hearings ("DOAH"), seeking to terminate the employment of Respondent.

At the final hearing, Petitioner called five witnesses: Lorry Coats, school secretary at Heathrow Elementary School (hereinafter "Heathrow"); Dr. Barbara Nixon, principal at Heathrow; Beverly Perrault, executive director of Elementary Education; Michelle McGhee; and Dr. Bill Vogel, superintendent of Seminole County Public Schools. Petitioner's Exhibits 1, 2, 5, 6, and 11 through 15 were admitted into evidence. Respondent presented the testimony of three witnesses: Neil McGhee, Respondent's husband; Barbara Johnson, former teacher at Heathrow; and Shannon McGhee, Respondent's daughter. Respondent offered Exhibits 1, 3, 4, 7 through 9, and 12, each of which was admitted into evidence.

The parties advised the undersigned that a transcript would be ordered of the final hearing. Upon request, the parties were

given 30 days from the date the transcript was filed at DOAH to submit Proposed Recommended Orders. The Transcript was filed at DOAH on January 26, 2009. Each party timely submitted a Proposed Recommended Order and they were given due consideration in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, Seminole County School Board (the "School Board") is the public body responsible for, inter alia, hiring and monitoring school teachers for Seminole County Public Schools ("SCPS"). Bill Vogel is the superintendent of SCPS.

2. Respondent is a certified school teacher and has been teaching school (primarily for grades 1 through 6) for 24 1/2 years. Respondent taught school at Heathrow for 16 1/2 years, beginning with second grade for three years, first grade for two years, then third grade for the duration.

3. On December 11, 2007, Respondent was suspended from her position as a teacher at Heathrow, because she brought a loaded handgun to school. Respondent has not worked as a school teacher since that day. The circumstances surrounding this incident form the issues in this case.

4. Respondent has a valid concealed weapon or firearm license from the State of Florida. The license allows Respondent to carry her weapon into public places. Respondent

owns a Smith & Wesson brand .357 caliber revolver which will be referred to hereinafter as the Handgun.

5. Respondent first obtained her concealed weapons permit as a result of two incidents in her life: First, she was traveling with her husband and while staying at a motel, encountered a very threatening and frightening group of people. Respondent and her husband feared for their life and honestly believed the group of people may attempt to force their way into Respondent's motel room. Respondent and her husband felt extremely vulnerable and unable to defend themselves. Second, Respondent's home was broken into in 2004 or 2005. As a result of these incidents, both Respondent and her husband purchased handguns, took the requisite classes and training, and then obtained concealed weapons permits.

6. Respondent took all appropriate safety classes after purchasing the Handgun. She trains monthly by firing the Handgun at a firing range and routinely reviews safety rules relating to ownership and discharge of a firearm.

7. On December 11, 2007, Respondent was having plumbing work done at her home. Respondent met the plumber at her house at around 3:00 in the afternoon. Respondent's husband was not home at that time. Feeling uncomfortable with the presence of the plumber inside her house, Respondent took the Handgun from its secure location in her bedroom and placed it in a table

drawer in the living room. Respondent sat next to that table while the plumber was in her home. Respondent's husband arrived home about 4:30 p.m.

8. After dinner, Respondent and her husband sat in the living room for after-dinner coffee. At that time, the husband noticed the Handgun in the table drawer. It was highly unusual for the Handgun to be anywhere except its secured location in Respondent's nightstand, so he questioned Respondent as to why. Respondent told him about her discomfort with the plumber, then said she was going grocery shopping later and would be taking the Handgun with her (in accordance with her normal practice).

9. Respondent then set the Handgun on her purse, a large black leather bag. The Handgun, in a black holster, set atop the purse and blended into the black leather of the purse.

10. Respondent and her husband sat in the living room for a while, but Respondent began to feel ill and decided not to go shopping after all. (Respondent had recently had knee replacement surgery and was still in some pain and using pain medications.) Instead, Respondent fell asleep in the living room and then later moved to her bedroom for the night.

11. The next morning, Respondent prepared for school as normal. She normally kept her school papers and work materials in a collapsible crate which had wheels and an extended handle. As she regularly did, Respondent placed her purse and cell phone

on top of the crate and wheeled it out to her car. The Handgun was still on top of the purse, but Respondent did not notice it.

12. Upon arrival at Heathrow, Respondent parked in the same parking lot she normally used, the one adjacent to the "bus loop" where school buses dropped off students each morning. Respondent took her crate out of her car and wheeled it toward the school building. As she crossed a short strip of grass just before reaching the bus loop, the Handgun and cell phone apparently jostled off the purse and fell onto the ground. Respondent did not notice the items fall and went on into the school building.<sup>1</sup>

13. A few minutes later, Lorry Coats, the school secretary at Heathrow, also parked her car in the same lot. As she walked toward the school, she saw something on the ground. Upon closer examination she found two items, Respondent's cell phone and the Handgun. Coats picked up both items and took them into the school administration building, being careful to conceal the Handgun so as not to alarm anyone.

14. Once inside the administration building, Coats notified Dr. Barbara Nixon, Heathrow's principal, about the Handgun and cell phone. A search was conducted and Nixon determined that Respondent was the owner of the cell phone. Nixon called Respondent in Respondent's classroom and let her know that the items had been found.

15. Respondent was very distraught when she discovered that she had 1) brought her Handgun to school, and 2) dropped it on the premises. She knows better than to bring a weapon on campus and had no intention of doing so.

16. Nixon called Respondent to the office and then called the police to report the incident. Respondent was then placed under arrest for possession of a firearm on school property and culpable negligence (exposing a person to possible injury). The first charge was a third-degree felony; the second was a second-degree misdemeanor. Both charges were eventually dismissed (nolle prossed) by the State Attorney's Office.

17. Respondent was then placed on suspension by the superintendent of SCPS pending a final decision by the School Board.

18. Possession of a loaded firearm on campus is, according to the superintendent, the most serious offense a person could commit. It is the most dangerous situation for students, staff, and visitors. Respondent committed an "extreme act of carelessness" that warrants a severe penalty, according to Superintendent Vogel.

19. Vogel addressed two other incidents involving the possession of weapons on campus, but distinguished them as less serious.

20. The first weapons incident involved the possession of a replica weapon by a student. The student intentionally brought the replica weapon to school and brandished it in a threatening manner. The student emerged from a school restroom and took a "shooting stance" toward police officers. After failing to heed warnings and continuing to point his replica weapon at SWAT team members, the student was shot to death by police.

21. The second weapons incident involved another teacher at Heathrow. The teacher, Mr. Diesbourg, drove to school with a BB rifle on the roof of his car. Diesbourg had placed the BB rifle on his car after shooting at a raccoon or squirrel at his house. He forgot about the rifle being on his car and drove to school. The rifle was noticed by another staff member and safely put away before being seen by students or visitors. This incident happened just eight days after the incident involving Respondent.

22. Later, Diesbourg drove to school with a pruning saw in his car. The pruning saw, left in plain sight in his unlocked vehicle, was a "weapon" as far as school policy is concerned. Again, once it was discovered by someone, the weapon was safely put away.<sup>2</sup>



23. Diesbourg was given a ten-day suspension without pay for the BB rifle incident. He was given a letter of concern for the pruning saw incident.

24. Clearly, a loaded .357 caliber revolver is more dangerous than a replica firearm, or a BB rifle, or a pruning saw.

25. Respondent is extremely sorry that she inadvertently brought the Handgun onto the Heathrow campus. She certainly did not intend to do so and knows better than to do so. Her remorse is clear and sincere.

26. Further, after suffering the consequences of her action (suspension from the job she loves, arrest by law enforcement, depression and loss of self esteem), there is little chance Respondent would ever make the same mistake. There is probably no teacher under contract with SCPS who would be more careful about such things than Respondent.

27. Nonetheless, Principal Nixon has some concerns about Respondent returning to Heathrow. She was concerned that something like this might happen again (although that seems unlikely when viewing the demeanor and sincerity of Respondent). Nixon also thinks that some parents may ask to have their children transferred from Respondent's class due to their (the parents') fear that Respondent would bring the Handgun to school again. There is no competent substantial evidence to support

Nixon's concern, but, of course, the possibility exists that some parents would be more fearful than others.

28. Respondent has a clear record as a teacher. She has not been reprimanded or sanctioned in any fashion during her 24 plus years in the classroom. She is respected by peers and by her students and their parents. Importantly, Respondent loves her profession and is deeply committed to teaching children.

29. While no one was injured or physically harmed by the incident involving Respondent's Handgun, the possibility of some harm did exist.

#### CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2008).<sup>3</sup>

31. McGhee is a classroom teacher under the definition of instructional personnel as set forth in Subsection 1012.01(2)(a), Florida Statutes.

32. The School Board has the authority to terminate a classroom teacher pursuant to Section 1012.33, Florida Statutes. However, a teacher may only be terminated for just cause. Just cause includes immorality, misconduct in office, incompetency,

gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude. § 1012.33(1)(a).

33. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In this matter, Petitioner has the burden to prove by a preponderance of the evidence that the allegations against Respondent are true and warrant termination of Respondent's contract. See Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995); and Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990).

34. Teachers or students who bring weapons onto school property are subject to punishment. The greater the danger, the greater the degree of punishment. However, as opined by Superintendent Vogel at the final hearing, "Every circumstance is different." Therefore, the facts of each case must be examined before the proper penalty can be imposed.

35. No one argues that Respondent's failure to secure her firearm and to allow it on campus was a serious breach of safety. There is a "zero tolerance" at SCPS schools for teachers or students who bring weapons on campus. That is, it is a violation to bring a weapon on campus, and each violation

of that policy will be punished. The question in the instant matter is what degree of punishment should be meted out.

36. In the Diesbourg case (discussed above), the teacher did not bring an inherently dangerous weapon on campus. The BB rifle, while a dangerous instrument, will not normally be used to fatally wound a person. A .357 handgun, on the other hand, will easily inflict mortal damage. But consider the case of the student with the replica firearm: A replica will not inflict mortal injury, but, in that case, the end result was death of the student. That scenario could easily have been repeated with Diesbourg's BB rifle. Yet his punishment was a ten-day suspension. And when he brought yet another weapon, the pruning saw, to school later, his punishment was again less than the maximum.

37. Conversely, Respondent's weapon was deadly in and of itself. If a child or other person had found the Handgun, they could have intentionally or accidentally killed someone with it. Luckily the Handgun was only on the ground for a few short minutes and was found by a responsible individual.

38. To-date, Respondent has lost over one year's pay while on suspension. She has suffered depression and loss of self esteem and confidence. Despite that fact, she continues to yearn for the opportunity to resume her chosen profession. She

is, clearly, remorseful for her mistake and had no intention to violate the policy.

39. The facts of this case are very similar to those in Hernando County School Board v. Ellison, DOAH Case No. 05-4195 (February 23, 2006). Ellison unintentionally left a firearm in the glove box of his truck. When the school's auto mechanics class removed the glove box while working on the truck, the firearm was discovered. The students turned the weapon over to their teacher who, in turn, gave it to a Sheriff's deputy. The school board sought termination of Ellison's contract. As in the instant case, Ellison was found to be remorseful, to have been an excellent teacher, and to have committed the violation unintentionally. Deputy Chief Judge Hooper, in his Recommended Order, stated:

If one balances this single careless act committed by Mr. Ellison with the overall good to be gained by allowing Mr. Ellison to continue his career as a teacher in the Hernando County School District, the inevitable conclusion is that just cause for termination is absent.

40. Judge Hooper's eloquent statement is equally applicable to the facts of this case. Respondent has a long, unblemished history with SCPS and is well respected as a teacher. It makes no sense to terminate her teaching contract on the basis of a single mistake.

41. Further, just as in the case of School Board of Pinellas County v. Hollis, DOAH Case No. 89-2447 (September 25, 1989), the scienter of intent is missing in the present action. The evidence in the instant case is clear, bringing the weapon on campus occurred due to a series of events which are understandable. Respondent testimony as to those facts is credible and persuading. She did not intend to bring the weapon on campus, period. So, like Hollis, Respondent was guilty of "[s]erious negligence, but under the terms and Rules applicable in this case, negligence does not, under the circumstances of this case, equate to misconduct sufficient to justify dismissal after an honorable and long-standing period of employment." Hollis, at Par. 37-40.

42. It has even been held that an intentional violation of the no-weapons-on-campus policy does not warrant termination of a contract. See Polk County School Board v. Bradley, DOAH Case No. 07-3721 (December 6, 2007). Respondent's unintentional violation certainly does not warrant a more severe penalty.

43. Petitioner has not met its burden of proof in this case to establish that termination of Respondent's employment contract is the appropriate sanction for Respondent's singular act of negligence.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Seminole County School Board, imposing the following punishment against Respondent, Michelle S. McGhee:

1. Written letter of reprimand for her negligence;
2. Suspension from teaching from December 12, 2007, until the commencement of the 2009-2010 school year in August 2009;
3. A period of probation for her first year back in the classroom.

DONE AND ENTERED this 6th day of March, 2009, in Tallahassee, Leon County, Florida.



---

R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of March, 2009.

## ENDNOTES

<sup>1/</sup> It should be noted that the Handgun fell onto the ground on the side of the bus loop away from the school bus doors. That is, students being dropped off by the bus would not be walking on the side of the loop on which the Handgun was found. That is not to say a student would not spot the Handgun through the bus window and go to investigate, but the Handgun was not in an area normally used by students getting to school.

<sup>2/</sup> Coincidentally, the pruning saw was discovered by a Department of Education prosecutor who was on campus to investigate another incident.

<sup>3/</sup> Unless otherwise stated herein, all references to Florida Statutes shall be to the 2008 version.

### COPIES FURNISHED:

Dr. Eric Smith  
Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Deborah K. Kearney, General Counsel  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Dr. Bill Vogel  
Superintendent of Schools  
Seminole County School Board  
400 East Lake Mary Boulevard  
Sanford, Florida 32773-7127

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



Matthew Haynes, Esquire  
Chamblee, Johnson & Haynes, P.A.  
510 Vonderburg Drive, Suite 200  
Brandon, Florida 33511

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.