

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                                    )  
  )  
vs.    )    Case No. 09-1268  
  )  
KAREN M. STOLT,                                    )  
  )  
          Respondent.                                )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

On May 5 and 6, 2009, a formal administrative hearing was conducted in Bradenton, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert J. Shapiro, Esquire  
Manatee County School Board  
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Bradenton, Florida 34206-9069

For Respondent: Melissa C. Mihok, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether the School Board of Manatee County (Petitioner) has just cause to terminate the employment of Karen M. Stolt (Respondent).

PRELIMINARY STATEMENT

By an Administrative Complaint dated March 5, 2009, the Petitioner alleged that on September 17, 2008, the Respondent reported for duty while under the influence of an unknown substance and in possession of controlled medications for which she did not have a valid prescription. The complaint further alleged that the Respondent had previously reported for duty while under the apparent influence of unknown substances and that the Respondent had previously pled guilty in Michigan to a 1989 charge of "possession of dangerous drugs."

The Respondent denied the allegations and requested a formal administrative hearing. The Petitioner forwarded the dispute to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of ten witnesses and had Exhibits 1 through 3 admitted into evidence. The Respondent testified on her own behalf, presented the testimony of two witnesses, and had Exhibits 2 through 4 and 7 admitted into evidence.

A Transcript of the hearing was filed on June 29, 2009. Both parties filed Proposed Recommended Orders on July 29, 2009, that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was employed by the Petitioner under a professional services contract as a teacher at Oneco Elementary School, a unit of the Manatee County School System.

2. The Respondent taught prekindergarten students, generally three to four years of age.

3. On September 17, 2008, the Respondent took two Hydrocodone tablets for back pain and then left her home in Myakka City, Florida, and drove the approximate 45-minute trip to the school.

4. After departing from her home and prior to arriving at school, the Respondent took a Soma tablet. Soma was described as a muscle relaxant.

5. After arriving at school, the Respondent went into the classroom of another teacher, Gretchen Hatton, at about 7:30 a.m. It was not unusual for the Respondent to enter Ms. Hatton's classroom at that time of day. No children were present.

6. Ms. Hatton observed that the Respondent appeared tired, that one side of her mouth was drooped, and that her speech was slurred and repetitive.

7. When the Respondent began to exit from Ms. Hatton's classroom, Ms. Hatton observed that the Respondent's gait was

unsteady. Ms. Hatton assisted the Respondent into a rocking chair and then exited the classroom, locking it as she left.

8. Ms. Hatton went to the school's nurse, Mary Fischer, to report that there was "something wrong with Karen."

9. Nurse Fischer and School Administrator Carol Cartwright went to Ms. Hatton's classroom.

10. Ms. Cartwright observed the Respondent to be "out of it." The Respondent's head was down, and she was generally non-responsive, her speech limited and slurred.

11. When questioned by Ms. Cartwright, the Respondent acknowledged that she had driven herself to the school.

12. A request was made for the Respondent's car keys, and the Respondent attempted unsuccessfully to retrieve her keys from her purse. The Respondent then directed Nurse Fischer to retrieve the keys.

13. Nurse Fischer pulled the keys from the Respondent's purse and noticed that a medicine bottle containing different varieties of pills was visible in the purse. Both the keys and the medicine bottle were removed from the Respondent's purse.

14. The Respondent was transported by wheelchair from Ms. Hatton's classroom to the school clinic in an effort to remove the Respondent from where students would be arriving for class.

15. Nurse Fischer contacted poison control in an effort to identify the types of pills in the bottle.

16. The pill bottle removed from the Respondent's purse contained seven Soma tablets, five Hydrocodone tablets, and 18 Vicodin tablets.

17. As time passed, the Respondent's condition improved, and she discussed the medication that was in the bottle with the school's resource officer, who had been summoned to the clinic by the school administrator.

18. After the Respondent was sufficiently recovered, she was transported to a drug screening lab and then returned to school. Thereafter, she was driven home in her vehicle by a school employee.

19. The results of the drug test were "negative."

20. All of the medications contained within the pill bottle are identified as controlled substances pursuant to the drug schedules set forth in the Florida Statutes.

21. Vicodin is a combination of Hydrocodone and Acetaminophen.

22. The Respondent did not have a prescription for Vicodin. She obtained the medication from another school employee with whom the Respondent traded pain medications.

23. At the hearing, several witnesses testified that prior to September 17, 2008, the Respondent had been on school grounds

or at professional events, including a professional training meeting and a "back-to-school" parent-teacher night, under the apparent influence of unknown substances.

24. Although the Respondent testified that she had previously combined Hydrocodone and Soma medications without difficulty, the Respondent acknowledged being in an impaired condition and unfit to teach at school on September 17, 2008. She otherwise denied that she had ever been impaired while at school or professional events.

25. The Respondent's behavior at the back-to-school event resulted in the school's principal issuing a verbal reprimand to the Respondent and a warning that repeated behavior could result in termination of employment.

26. The greater weight of the evidence established that the Respondent exhibited behavior indicative of intoxication or impairment related to substance use on September 17, 2008, and at other school events, including the back-to-school event, and that her behavior was sufficient to preclude her participation in the activities.

27. The evidence fails to establish that the Respondent's impairment on occasions other than September 17, 2008, was the result of improper use of medication or other controlled substances.

28. The Respondent was charged with unlawful possession of a controlled substance (Vicodin), and she entered a pretrial diversion program. She was sentenced to perform community service and placed on probation for one year. At the time of the hearing, the Respondent remained on probation.

29. At the hearing, the Respondent testified that she has used prescription pain medication beginning approximately ten years ago following surgery for a herniated disk in her back.

30. The Respondent testified that she suffered a broken wrist in the spring of 2008 and bruised ribs in August of 2008. Some school employees attributed the Respondent's injuries in 2008 to domestic violence. The Respondent testified that she and her husband, whom she married in 1999 and to whom she remained married at the time of the hearing, had "a lot of difficulty" in 2008.

31. The school principal, Marian Summers, testified that she felt that the Respondent's effectiveness as a teacher was impaired by the events of September 17, 2008. Ms. Summers further testified that she viewed the issue as a matter of student safety, in that the Respondent exhibited an inability to care for herself. Ms. Summers was also concerned that the Respondent apparently drove herself to the school in an impaired condition. Ms. Summers testified that she had expressed her concern to the superintendent.

32. Superintendent of the Manatee County School System Tim McGonegal testified that the sole reason for his recommendation for termination of the Respondent's employment was the incident on September 17, 2008. Superintendent McGonegal stated that he took into consideration the fact that the Respondent was a teacher in a prekindergarten class that included some special needs children, that the Respondent was under the influence of narcotics, and that she was essentially non-functional at the time she arrived on campus. He noted that the Respondent drove herself to the school. He expressed concern about the quantity of medication which the Respondent had in her possession at the time of the incident and the fact that she did not possess a prescription for a substantial portion of the medication.

33. Superintendent McGonegal testified that the school system has an obligation to care for the students attending the facility and that the Respondent's arrival at school campus on September 17, 2008, under the influence of narcotics and in possession of controlled substances, which were not prescribed to her, indicated to him that he could not trust the Respondent to appropriately provide care and attention required for the students in her class or to fulfill her obligations as a teacher. He testified that a teacher must "have all of their senses and faculties" to deal with the students for whom they



are responsible and is of great concern as to the Respondent's employment as a teacher of very young children.

34. Because she violated the trust placed in her, the Respondent's effectiveness as an employee of the school system was substantially impaired by her behavior. The superintendent testified: that he lacked confidence that the Respondent would not repeat the behavior, that he believed she disgraced herself and the school by her behavior, and that he believed her actions constituted immorality. The superintendent's testimony is credited in full.

35. At the hearing, Superintendent McGonegal testified that the alleged 1989 incident in Michigan was not a factor in his recommendation to terminate the Respondent's employment. Accordingly, the allegation is deemed immaterial and has not been addressed in this Recommended Order.

#### CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

37. The Petitioner has the burden of proving by a preponderance of the evidence the allegations underlying the proposed termination of the Respondent's employment as set forth in the Administrative Complaint. 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). The burden has been met.

38. At all times material to this case, the Respondent was employed by the Petitioner under a professional services contract. Subsection 1012.33(1)(a), Florida Statutes (2008), states that persons employed under such contracts may be dismissed during the term of the contract only for just cause, and provides as follows:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

39. Subsection 6.11(12)(c) of the Policies and Procedures Manual of the School Board of Manatee County provides as follows:

Involuntary termination:

Any employee of the School Board may be terminated from employment for just cause including, but not limited to, immorality, misconduct in office, incompetence, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, violation of the Policy and Procedures Manual of the School District of Manatee County, violation of any applicable Florida statute, violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

40. Florida Administrative Code Rule 6B-4.009 provides the following relevant definitions:

(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 individual's service in the community.

(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, 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.

41. The evidence establishes that the Respondent's behavior on September 17, 2008, constituted immorality because it was "inconsistent with the standards of public conscience and good morals" and was a disgrace to herself and the school system.

42. The Code of Ethics of the Education Profession in Florida, set forth at Florida Administrative Code Rule 6B-1.001 provides 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.

43. The Principles of Professional Conduct for the Education Profession in Florida are set forth at Florida Administrative Code Rule 6B-1.006 and provide, in relevant part, 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.

\* \* \*

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

(a) Shall maintain honesty in all professional dealings.

44. The evidence establishes that the Respondent's behavior on September 17, 2008, constituted misconduct in office. By arriving for duty under the influence of medication so as to be incapable of ambulation, coherent communication, or the ability to care for herself, the Respondent failed to make a reasonable effort to protect students from conditions harmful to learning and to protect the student's health and safety, violating Florida Administrative Code Rule 6B-1.006(3)(a) and Subsection 1012.33(1)(a), Florida Statutes (2008).

45. The evidence further establishes that by denying that she appeared under the influence of unknown substances at school functions prior to September 17, 2008, despite substantial credible evidence to the contrary, the Respondent failed to maintain honesty in professional dealings, violating Florida Administrative Code Rule 6B-1.006(5)(a) and Subsection 1012.33(1)(a), Florida Statutes (2008).

46. At the hearing, the Respondent testified that no one ever advised her of any concern about her drug use, while at the

same time testifying that she wished someone had advised her of their concerns. Had the Respondent not appeared on campus under the influence, there would have been no reason for anyone to note her behavior at all. The greater weight of the evidence establishes that other school employees were aware of her impaired behavior, that such behavior was discussed with the Respondent, and that a verbal warning was issued to the Respondent specifically regarding the situation.

47. The Administrative Complaint alleged that the Respondent had violated Sections 2.20 and 6.11 of the Policies and Procedures Manual of the School Board of Manatee County. Section 2.20 was not offered into evidence and is not addressed herein. Subsection 6.11(10) of the Policies and Procedures Manual of the School Board of Manatee County provides in relevant part as follows:

Alcohol and Drug-Free Workplace:

Employees are expected to be free from the influence of, use of, possession, selling and dispensing of drugs and alcohol while on duty or while on School Board property. Because of the special role the school system plays in discouraging our students from using controlled substances, employees are further expected to refrain from illegally using, possessing, manufacturing, dispensing, or selling controlled substances (illegal drugs) in their private lives.

48. The evidence establishes that on September 17, 2008, the Respondent arrived on school grounds under the influence of, and in possession of, controlled substances.

49. Subsection 893.13(6)(a), Florida Statutes (2008), provides as follows:

It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

50. The evidence establishes that on September 17, 2008, the Respondent arrived on school grounds in possession of controlled substances for which she had no valid prescription.

51. By arriving at the school under the influence of controlled substances, and in possession of controlled substances without a valid prescription, the Respondent committed a violation of Subsection 6.11(10) of the Policies and Procedures Manual of the School Board of Manatee County.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Manatee County,

Florida, enter a final order terminating the employment of  
Karen M. Stolt.

DONE AND ENTERED this 21st day of August, 2009, in  
Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of August, 2009.

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.