

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,     )  
  )  
      Petitioner,                        )  
  )  
vs.                                        )     Case No. 10-0532  
  )  
MICHAEL LINDSKOG,                    )  
  )  
      Respondent.                       )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 28, 2010, in Sanford, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

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

For Respondent: Thomas B. Luka, Esquire  
390 North Orange Avenue, Suite 1630  
Orlando, Florida 32801-1642

STATEMENT OF THE ISSUE

Whether Michael Lindskog (Respondent) should be terminated from his employment with the School District of Seminole County, Florida (School District).

PRELIMINARY STATEMENT

On December 29, 2009, Respondent was arrested in Tampa, Florida, and charged with possession of cocaine and operating a vehicle while under the influence of alcohol. Subsequently, Respondent advised his principal of the arrest, and the matter was referred to School District personnel, who gathered information regarding the incident. Ultimately, by letter, dated January 8, 2010, the superintendent of Seminole County Public Schools notified Respondent that he would be recommended for termination of employment. The Seminole County School Board (Petitioner or Board) suspended Respondent without pay on January 26, 2010, and initiated termination proceedings. Respondent timely contested the suspension and proposed termination.

The case was forwarded to the Division of Administrative Hearings (DOAH) on February 4, 2010. Thereafter, the parties engaged in discovery, delayed the case in order for Respondent to address the criminal case on-going in Hillsborough County, and submitted a Joint Pre-hearing Stipulation as directed in this cause.

At the hearing conducted on July 28, 2010, Petitioner presented testimony from Mark Russi, John Reichert, Kelly Stead, and Bill Vogel. Petitioner's Exhibits 1 through 3 were admitted into evidence. Respondent testified in his own behalf. The

Transcript of the proceeding was filed with DOAH on August 10, 2010. The parties were granted 30 days within which to file their proposed recommended orders. Petitioner filed a proposed order on September 10, 2010. Respondent has not filed a post-hearing proposal. This Recommended Order is entered to address the issues of the case and to relinquish jurisdiction back to the Board.

#### FINDINGS OF FACT

1. Petitioner is a duly-constituted entity charged with the responsibility and authority to operate, control, and supervise the public schools within the Seminole County Public School District. As such, it has the authority to regulate all personnel matters for the School District. See § 1001.32, Fla. Stat. (2009).<sup>1</sup>

2. Bill Vogel (Vogel) is the superintendent of the public schools for the School District.

3. Vogel has the authority to recommend suspension and/or termination of employees for alleged misconduct.

4. At all times material to the allegations of this case, Respondent was an employee of the Board. Respondent held a professional service contract for the 2009-2010 school year as a math teacher at Sanford Middle School. Respondent also coached the boys' volleyball team.

5. At all times material to this case, the principal at Sanford Middle School was Mark Russi (Russi). With the exception of the matters alleged in this case, Russi found Respondent to be a satisfactory teacher and coach. Prior to the incident described in this case, Respondent had no previous disciplinary infractions and enjoyed a "clean record" with the School District.

6. As of the date of hearing, Respondent was certified to teach mathematics by the Florida Department of Education. There is no indication that the Florida Education Practices Commission has ever disciplined Respondent regarding any educator's deficiency.

7. On December 29, 2009, Respondent was arrested by Officer Kelly Stead (Stead) in the City of Tampa, Florida, for the offenses of: possession of a controlled substance (cocaine), driving under the influence of alcohol (DUI), and refusal to submit to the DUI test.

8. When Respondent returned to Sanford Middle School after the holiday break, he immediately sought out Russi and reported the arrest incident, and the charges that had been levied against him. In turn, Russi reported the allegations to the Board's Human Resources Professional Practices head, John Reichert (Reichert). The notifications (Respondent to Russi,

Russi to Reichert) were done in accordance with Board policy. Respondent appropriately self-reported the incident.

9. To follow-up on the report, Reichert went into fact-finding mode and contacted the police in Tampa, Florida, to get a copy of the pertinent police documents. Reichert wanted to confirm that the information given to the School District was accurate and that any decision the Board might consider would be supported by a record.

10. Subsequently, Reichert drafted a letter, that was signed by Vogel, dated January 8, 2010. Reichert then provided the letter (Petitioner's Exhibit 1) to Russi on January 11, 2010. On the same day, Russi called Respondent to the office, provided the letter to him, and directed that he sign the second page acknowledging receipt of the letter.

11. In summary, the letter provided that Vogel would recommend to the Board that Respondent be suspended with a further recommendation of termination of Respondent's employment with the School District. Additionally, the letter gave Respondent a point of entry to challenge the Board's decision through the administrative process. Respondent timely elected to challenge the Board's decision to suspend him without pay and terminate his employment.

12. Concurrently, the criminal proceedings against Respondent were in the Thirteenth Judicial Circuit, Hillsborough

County, Florida. By Information, Case No. 2009-CF-021466, the state attorney charged Respondent with possession of cocaine in violation of Subsection 893.13(6)(a), Florida Statutes; driving under the influence in violation of Subsection 316.193(1), Florida Statutes; and refusal to submit to testing in violation of Subsection 316.1939(1), Florida Statutes. Subsequently, Respondent entered a plea to the second and third charges and was adjudicated guilty.

13. Respondent executed a Drug Court Agreement that allowed him admission to the Pre-trial Intervention Drug Court Program. The program requires Respondent to participate as directed for a period of 18 months. If Respondent successfully completes the program, as determined by the state attorney, the charge of possession of cocaine will be dismissed. Based upon the date the agreement was executed, the time for such completion will not end until approximately September 2011.

14. Respondent considers himself to be a good teacher and does not believe this type of incident will happen again. Respondent maintains he attends NA and AA classes regularly and has a sponsor helping work toward recovery.

15. Other than the charges described above, Respondent has never had criminal charges filed against him. Respondent took responsibility for the incident complained of, admitted to having cocaine in his pocket, and has complied with all

directives of the court with regard to drug testing, counseling, community service, payment of fees associated with the Drug Agreement, and attendance at meetings as ordered.

16. Respondent fully cooperated in reporting the incident and completing work assignments before leaving school. Respondent enjoyed success, as a teacher, at Sanford Middle School. Nevertheless, Russi, Reichert, and Vogel expressed grave concerns regarding allowing Respondent back into the classroom.

17. Russi does not have confidence that Respondent can exercise the judgment necessary to deal with the rigors of teaching inside and outside of the classroom.

18. Additionally, Reichert opined that Respondent failed to maintain the high standard of ethical and professional conduct expected by Petitioner. Essentially, Petitioner is not in a position to trust Respondent given its profound disappointment at the lack of judgment Respondent displayed. Reichert has recommended termination for other Board employees who have had cases involving cocaine. According to Reichert, no facts in this case warrant a different result.

19. Given the limited time of Respondent's sobriety (six months as of the date of hearing), Petitioner avers that Respondent's lack of judgment makes it difficult to justify putting Respondent back into the classroom. Entrusting the

education and well-being of students to someone who has lost effectiveness as a teacher (per Vogel) is not appropriate in this case. Vogel maintains that Respondent cannot serve as a role model when he has demonstrated such poor judgment.

#### CONCLUSIONS OF LAW

20. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2010).

21. Petitioner bears the burden of proof in this cause to establish, by a preponderance of the evidence, that Respondent committed the violations alleged. See McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

22. Section 1012.33, Florida Statutes, provides, in pertinent part:

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: 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 involving moral turpitude.

23. In this case, Petitioner maintains that it has just cause for termination due to Respondent's 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.

24. Teachers in Florida are held to the highest standard of ethical conduct. Florida Administrative Code Rule 6B-1.001 provides:

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.

25. In this case, possession of cocaine, driving while under the influence of some substance (presumably alcoholic beverages), and refusal to submit to testing regarding such substance constitutes just cause to terminate Respondent's employment. Petitioner has consistently taken a no-tolerance


approach to the possession of controlled substances. Respondent could be a wonderful teacher, but Petitioner is entitled to require that its employees demonstrate the highest level of conduct becoming School District personnel. Driving while impaired and possession of cocaine does not meet that standard.

26. It is concluded Petitioner has established by a preponderance of the evidence that Respondent committed acts constituting misconduct sufficient to impair his effectiveness as a teacher, failed to uphold the standard of conduct reasonably expected of Board employees, and breached a level of trust necessary to allow him to continue employment with the Board. Such behavior demonstrates just cause for termination.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Seminole County School Board enter a final order terminating Respondent's employment with the School District.

DONE AND ENTERED this 8th day of November, 2010, in  
Tallahassee, Leon County, Florida.

  
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J. D. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of November, 2010.

ENDNOTE

<sup>1/</sup> All statutory references are to Florida Statutes (2009),  
unless otherwise noted.

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.