

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

JOSEPH BURKE, Ed.D., )  
SUPERINTENDENT, )  
)  
Petitioner, ) Case No. 13-0002  
) DOAH Case No. 12-003903  
v. )  
)  
MARIA BURNS, )  
)  
Respondent. )

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**FINAL ORDER**

THIS CAUSE came to be heard on this the 4th day of June, 2013, before the School Board of Lee County, Florida, and said School Board finds as follows:

1. Maria Burns ("Respondent") is employed by The School Board as a teacher. Respondent is an "instructional employee," as defined by §1012.01(2)(a), Florida Statutes, and is governed by the collective bargaining agreement between the School Board and the Teachers Association of Lee County ("TALC"). The standard for the discipline of instructional personnel is "just cause" pursuant to §1012.33, Florida Statutes. The Superintendent has authority to recommend dismissal of Respondent, and the School Board has authority to dismiss Respondent from his employment. §§1012.27(5) and 1012.22(1)(f), Florida Statutes.

2. On or about May 21, 2012, the Charlotte County Sheriff's Office (CCSO) executed a search warrant at the home of Respondent. CCSO was in the process of investigating a shooting that occurred at Respondent's home. During the investigation the CCSO discovered marijuana growing inside Respondent's home. Five potted plants containing what appeared to be marijuana were confiscated. The leaves of the plants tested positive for marijuana.

3. On May 25, 2012, Respondent was arrested and charged with the following: sale, delivery and manufacture of cannabis pursuant to §893.13(1)a., Florida Statutes, a third degree felony; possession of 20 grams or less of cannabis pursuant to §893.13(6)b., Florida Statutes, a misdemeanor; use or possession of drug paraphernalia pursuant to §893.147(1), Florida Statutes, a misdemeanor. On May 26, 2012, Respondent was suspended with pay pending the disposition of the criminal charges.

4. The Respondent was suspended without pay effective October 9, 2012.

5. On November 2, 2012, counsel for the Respondent informed the Petitioner that the Respondent was requesting a formal administrative hearing on the matter.

6. The final hearing took place on February 28, 2013, before Administrative Law Judge (ALJ) J. Lawrence Johnston.

7. The ALJ issued his Recommended Order on April 19, 2013.

8. The ALJ found that Respondent's arrest for marijuana cultivation disqualified her from employment as a teacher. As a result, the School Board was required to remove her from her teaching position until the arrest was resolved in a way that made her eligible for employment. This occurred when the criminal charges were dropped on February 25, 2013.

9. As a result the ALJ recommended reinstatement and back pay from February 26, 2013, forward.

It is ORDERED as follows:

10. Respondent's suspension without pay from October 9, 2012, until February 25, 2013, is upheld. Respondent's employment is reinstated with back pay from February 26, 2013, forward.

11. This Order may be appealed to the District Court of Appeal of Florida, Second District, P.O. Box 327, 1005 E. Memorial Boulevard, Lakeland, Florida 33802, telephone number (863) 499-2290. The appeal must be filed within thirty (30) days of the date of this Order by filing a Notice of Appeal with

the School Board and a second copy with the District Court of Appeals. For further information, contact Robert Dodig, Jr., Staff Attorney, 2855 Colonial Boulevard, Fort Myers, Florida 33966, telephone number (239) 335-1447.

ENTERED on this the 4th day of June 2013.

  
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Mary Fischer, M.A., Chairman

Copies to:

Robert Dodig, Jr., Staff Attorney  
Robert Coleman, Respondent's Attorney  
Division of Administrative Hearings  
Personnel File