

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 12-3972TTS

PAMELA PRUDENT,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2012), before Jessica E. Varn, a duly-designated administrative law judge of the Division of Administrative Hearings (DOAH). The hearing was held on October 8, 2013, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Cristina Rivera, Esquire  
Miami-Dade County School Board  
Suite 430  
1450 Northeast Second Avenue  
Miami, Florida 33132

For Respondent: Leslie Phyllis Holland, Esquire  
Law Office of Leslie Holland  
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North Miami Beach, Florida 33162

STATEMENT OF THE ISSUE

Whether just cause exists to suspend Ms. Prudent without pay and dismiss her from employment with the Miami-Dade County School Board.

PRELIMINARY STATEMENT

On November 21, 2012, Miami-Dade County School Board (School Board) took action to suspend Ms. Prudent's employment without pay and to initiate proceedings to terminate her employment. Ms. Prudent timely requested an administrative hearing, and the School Board referred the matter to DOAH on December 10, 2012. The hearing was originally scheduled for February 13, 2013. Based upon numerous requests from the parties, the hearing was rescheduled several times, as follows: April 10, 2013; May 6, 2013; June 7, 2013; July 26, 2013; August 22, 2013; and then October 8, 2013.

The Notice of Specific Charges charged Ms. Prudent with four counts: (1) misconduct in office, (2) violation of School Board Rule 6Gx13-4A-1.21, (3) violation of School board Rule 6Gx13-4A-1.213, and (4) immorality.

At the final hearing, the School Board presented the testimony of John Kennedy, Penny Parham, Magaly Abrahante, and Joyce Castro. School Board Exhibits 1-29 were admitted into evidence. Ms. Prudent testified on her own behalf, and also

presented the testimony of her three children, Brenda Prudent, Gwendolyn Prudent, and Brandon Prudent.

The one-volume Transcript of the proceedings was filed with DOAH on October 13, 2013. The parties requested an extension of time to file proposed recommended orders, which was granted. On December 2, 2013, both parties filed proposed recommended orders, which were considered in the preparation of this Recommended Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged misconduct.

#### FINDINGS OF FACT

1. At all times material to this case, the School Board has been the entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida.

2. Since 2006, Ms. Prudent has been employed as a teacher in a public school in Miami-Dade County.

3. Miami-Dade County schools participate in the National School Lunch and Breakfast Program. The Free and Reduced Lunch Program (FRLP) is part of the National School Lunch and Breakfast Program, and is subsidized by the federal government. Pursuant to United States Department of Agriculture (USDA) requirements, each school district must provide a FRLP application to each and every student.

4. Each family submits one application for the entire household, to be completed by an adult household member. The application requires that each household member be listed, and each individual's respective gross income also be listed. If a household member has no income to report, that should also be noted on the application.

5. The application has a certification and signature section, which states as follows:

The adult household member who completed this application must sign and include their social security number. A Social Security number is not required on Food Stamp, TANF, FDPIR, or Foster Child applications. If you do not have a Social Security number (SSN), place an X in the box provided.

I certify (promise) that all information on this application is true and that all income is reported. I understand that the school will get Federal funds based on the information I give. I understand that school officials may verify (check) the information. I understand that if I purposely give false information, my children may lose meal benefits and I may be prosecuted under state and federal statutes.

6. FLRP applications were filled out for the Prudent children for at least three school years, including the 2009-2010 school year, and the 2010-2011 school year. On the applications Ms. Prudent certified, with her signature, that she had accurately completed the applications.

7. On the 2009-2010 application, three adults were listed as household members: the children's grandmother, who had no income; the children's father, who was gainfully employed with the City of Fort Lauderdale; and Ms. Prudent, who was employed as a teacher.

8. The grandmother's lack of income was accurately reported, but neither parent's income was accurately reported. Ms. Prudent is listed as earning \$1,000.00 bi-weekly. Ms. Prudent actually earned a gross bi-weekly salary ranging from \$1,269.66 to \$2,017.00 during the 2009-2010 school year.

9. As to the father's income, the 2009-2010 application falsely states that he had no income. Actually, Mr. Prudent was gainfully employed, earning approximately \$1,719.28 bi-weekly.

10. The following year, the 2010-2011 school year, Ms. Prudent once again signed and certified that she had completed the FRLP application, and listed the same adult household members as she had identified the year before.

11. As to the grandmother, the application accurately reflects that she had no income. As to the father, the application lists a biweekly income that is close to accurate, with only a small discrepancy.

12. But as to Ms. Prudent, the 2010-2011 application states that she receives no income, despite the fact that she was

gainfully employed as a teacher with Miami-Dade County Schools, earning approximately \$49,000.00 a year.

13. As a result of the applications filed for both school years, the Prudent children were approved to receive free or reduced price meals.

14. A Department of Food and Nutrition account statement for each Prudent child was entered into evidence. The statement identifies every meal given to the Prudent children during the school years at issue. The tracking system uses each student's identification or PIN number, which is scanned every time a meal is provided. According to the data recorded on the statements, the three Prudent children each received free or reduced meals during the 2009-2010 and 2010-2011 school years.

15. Based on the number of enrolled students entitled to FRLP, a school may receive a "Title 1 designation," which provides supplemental federal funding for low income schools. As part of the supplemental funding, the school is provided supplemental educational services (SES). Essentially, free tutoring is provided to the students who qualify for FRLP.

16. In order for a student receiving FRLP to receive the free tutoring, the parents must complete yet another application.

17. For the 2010-2011 school year, Ms. Prudent filled out an SES application requesting tutoring services for one of her daughters, based on her eligibility for FRLP. She signed the

form, certifying that she was requesting SES services for her child.

18. As a result of the SES application, which was based on the student's eligibility for FRLP, one of Ms. Prudent's daughters received SES tutoring services for the 2010-2011 school year. There is more demand for the tutoring services than there is availability; Ms. Prudent's child received free tutoring services when other eligible students did not.

19. Ms. Prudent testified that while she did sign all the various applications, she never read them and essentially had no idea what she was signing. The Prudent children echoed Ms. Prudent's testimony, although not consistently. In light of the evidence presented at hearing, Ms. Prudent's testimony, as well as her children's testimony, is not found credible.

20. Because she omitted information that was required when filling out applications for her children to receive free and reduced meals, and free tutoring services, Ms. Prudent acted dishonestly. Federal dollars, funded by taxpayers, were spent on services provided to the Prudent children, who did not qualify for any of the benefits.

21. Ms. Prudent is guilty of misconduct in office and of violating School Board Rule 6Gx13-4A-1.213, "Code of Ethics."

CONCLUSIONS OF LAW

22. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to chapter 120.

23. District school boards have the authority to operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law. § 1001.32(2), Fla. Stat.

24. Such authority extends to personnel matters and includes the power to suspend and dismiss employees. See §§ 1001.42(5), 1012.22(1)(f), and 1012.23(1), Fla. Stat.

25. At all times material to the instant case, the School Board had the right, under section 1012.33(6)(a), to suspend or dismiss, for "just cause," classroom teachers and other instructional personnel having professional service contracts.

26. "Just cause" has been defined to include, but not be limited to, 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. § 1012.33(1)(a), Fla. Stat.

27. In order to terminate Ms. Prudent, as the School Board seeks to do in this proceeding, the School Board must demonstrate by a preponderance of the evidence that Ms. Prudent committed the



violations as alleged in the Notice of Specific Charges. McNeill v. Pinellas Cnty. Sch. Bd., 678 So 2d 476, 477 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990).

28. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000); see also Williams v. Eau Claire Pub. Sch., 397 F.3d 441, 446 (6th Cir. 2005) (holding trial court properly defined the preponderance of the evidence standard as "such evidence as, when considered and compared with that opposed to it, has more convincing force and produces . . . [a] belief that what is sought to be proved is more likely true than not true").

29. In Count I of the Notice of Specific Charges, Ms. Prudent is charged with "Misconduct in office" which has been defined in Florida Administrative Code Rule 6B-4.009(3)) 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.

30. The Code of Ethics of the Education Profession is set forth in Florida Administrative Code Rule 6B-1.001, and provides:

(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.

31. Ms. Prudent's dishonesty runs afoul of section (3) above, as she failed to sustain the highest degree of ethical conduct.

32. The Principles of Professional Conduct for the Education Profession in Florida is set forth in Florida Administrative Code Rule 6B-1.006, and provides in pertinent part as follows:

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

\* \* \*

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

33. Ms. Prudent, in misrepresenting facts on the SES application for free tutoring services for her daughter, violated section (4) (b) of the Principles of Professional Conduct, and is guilty of Count I.

34. In Count II of the Notice of Specific Charges, Ms. Prudent is charged with violating School Board Rule 6Gx13-4A-1.21, "Responsibilities and Duties," which provides in relevant part:

I. Employee Conduct

All persons employed by the School board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

35. There is no evidence establishing an objective standard of conduct to evaluate Ms. Prudent's actions in the community, or evidence that Ms. Prudent engaged in unseemly conduct in the workplace. Accordingly, Ms. Prudent is not guilty of violating School Board Rule 6Gx13-4A-1.21.

36. In Count III of the Notice of Specific Charges, Ms. Prudent is charged with violating School Board Rule 6Gx13-4A-1.213, Code of Ethics, which provides in relevant part:

All members of The School Board of Miami-Dade County, Florida, administrators, teachers, and all other employees of Miami-Dade County Public Schools, regardless of their position, because of their dual roles as public servants and educators are to be bound by the following Code of Ethics. Adherence to the Code of Ethics will create an environment of honesty and integrity and will aid in achieving the common mission of providing a safe and high quality education to all Miami-Dade County Public Schools students.

\* \* \*

3. Aware of the importance of maintaining the respect and confidence of one's colleagues, students, parents, and other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

\* \* \*

### III. FUNDAMENTAL PRINCIPLES

The fundamental principles upon which this Code of Ethics is predicated are as follows:

\* \* \*

- Honesty -- Dealing truthfully with people, being sincere, not deceiving them nor stealing from them, not cheating or lying.

\* \* \*

Each employee agrees and pledges:

1. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.

2. To obey local, state and national laws, codes, and regulations.

37. Ms. Prudent's dishonest behavior, in falsifying applications and allowing her children to receive benefits for which they did not qualify, is in violation of the Code of Ethics. An inference of impaired effectiveness may be drawn as a result of such behavior.

38. For these reasons, Respondent is guilty of violating School Board Rule 6Gx13-4A-1.213, as alleged in Count III of the Notice of Specific Charges.

39. Lastly, in Count IV of the Notice of Specific Charges, Ms. Prudent is charged with immorality, which is defined as:

[C]onduct 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.

Fla. Admin. Code R. 6B-4.009(2) (emphasis added).

40. The School Board must demonstrate—in order to dismiss Ms. Prudent for immoral conduct—a) she engaged in behavior "inconsistent with the standards of public conscience and good morals, and b) that the conduct was sufficiently notorious so as to [1] disgrace the teaching profession and [2] impair

[Respondent's] service in the community." McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996) (italics in original).

41. Here, the School Board presented no evidence establishing the applicable "standards of public conscience and good morals." Fla. Admin. Code R. 6B-4.009(2); McNeill, 678 So. 2d at 477. As a result, the undersigned cannot determine whether Ms. Prudent violated such public standards. The School Board has failed to meet its burden of proof with respect to the charge of immorality. Broward Cnty. Sch. Bd. v. Deering, Case No. 05-2842, 2006 Fla. Div. Adm. Hear. LEXIS 367, \*12 (Fla. DOAH July 31, 2006) (finding educator not guilty of immorality where school board "did not offer any persuasive evidence establishing the applicable 'standards of public conscience and good morals'"). Accordingly, Ms. Prudent is not guilty of Count IV.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. It is further RECOMMENDED that the final order terminate Ms. Prudent's employment.

DONE AND ENTERED this 19th day of December, 2013, in  
Tallahassee, Leon County, Florida.



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JESSICA E. VARN  
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Filed with the Clerk of the  
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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.