STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MONROE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 13-1083TTS

MARISA GOOTEE,

Respondent.
_____/

MONROE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 13-1084TTS

DAVID GOOTEE,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference at sites in Tallahassee and Key West, Florida, on August 27, 2013, before Administrative Law Judge Edward T. Bauer of the Division of Administrative Hearings.

APPEARANCES

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For Respondents: Robert K. Michael, Esquire
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STATEMENT OF THE ISSUE

Whether there is just cause to terminate Respondents' employment with the Monroe County School Board.

PRELIMINARY STATEMENT

By correspondence dated January 15, 2010, the Monroe County School Board ("Petitioner" or "School Board") notified Respondents that it intended to terminate their instructional positions based upon allegations that they had "prepar[ed] and submitt[ed] false time reports for additional compensation for which [they] were already being compensated . . . under [their] School Board Contract[s]." Thereafter, on January 27, 2010, the School Board filed separate administrative complaints (collectively, "Complaints") against Respondents, which alleged, inter alia, that they had failed to maintain honesty in all professional dealings and/or submitted fraudulent information on any document in connection with professional dealings, contrary to the Principles of Professional Conduct for the Education Profession and School Board Policy 3210.

Respondents timely requested formal administrative hearings to contest the School Board's action, and, on February 1, 2010, the matter was referred to the Division of Administrative

Hearings for further proceedings and assigned Case Nos. 10-0495TTS and 10-0497TTS.

In an apparent effort to settle the matter, the parties requested, and received, numerous continuances of the final hearing date; ultimately, on April 20, 2012, the parties filed a "Joint Stipulation for Stay of Final Hearing Pending Settlement," which indicated that a tentative resolution had been reached and would be presented to the School Board for its approval. In an Order dated April 23, 2012, the undersigned instructed the parties to file a status report no later than July 2, 2012, and that, in the event such a report was not submitted, the files of the Division of Administrative Hearings would be closed. No status report was filed, which resulted in the entry of an "Order Closing Files and Relinquishing Jurisdiction" on July 6, 2012.

More than eight months later, on March 21, 2013, Respondents filed an unopposed "Motion to Reopen Division File." (The Motion indicated, in part, that the School Board had rejected the proposed settlement.) The undersigned granted Respondents' request and re-opened the proceeding under Case Nos. 13-1083TTS and 13-1084TTS.

As noted above, the final hearing was held on August 27, 2013, during which Petitioner introduced 15 exhibits, numbered 1 through 15, and presented the testimony of Jeff Arnott and Debra Henriquez. Respondents testified on their own behalf and

introduced 180 exhibits, numbered 1 through 180. At the conclusion of the final hearing, the parties agreed that proposed recommended orders would be submitted no later than 20 days following the filing of the transcript.

The final hearing Transcript was filed with the Division of Administrative Hearings on September 23, 2013. Thereafter, and at the parties' joint request, the proposed recommended order deadline was extended to October 18, 2013. Each party filed timely proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.

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

FINDINGS OF FACT

A. The Events

1. Petitioner is the authorized entity charged with the responsibility to operate, control, and supervise the public schools within Monroe County, Florida.

2. At all times material to this proceeding, Respondents David Gootee and Marisa Gootee (hereinafter "Mr. Gootee," "Mrs. Gootee, or "the Gootees") served as cosmetology teachers at Key West High School ("KWHS"). Pursuant to the terms of their professional service contracts, Mr. and Mrs. Gootee were obligated to perform, respectively, 4.8 and 7.5 hours of work

each school day; in exchange, the Gootees each received salaries.[1/]

3. As established during the final hearing, the School Board offers cosmetology instruction to two distinct populations: "traditional" high school students, who are taught during regular school hours; and individuals enrolled in the School Board's adult education program. From what can be gleaned from the record, it appears that, prior to the 2001-2002 school year, adults who received cosmetology instruction did so separately, and at different times (presumably, in the late afternoon or evening), from traditional high school students. Consequently, the work hours for which the Gootees received salaries, which coincided with KWHS's regular bell schedule, were dedicated exclusively to the instruction of traditional students.

4. In or around 2001, however, John Andola, the School Board's director of adult education, asked the Gootees if they would be willing to furnish instruction to the adult students during normal school hours——i.e., at the same time as the traditional cosmetology students. By all accounts, the presence of the adult students would, and ultimately did, impose additional responsibilities upon the Gootees. For instance, the adult students, who were segregated from the traditional students for part of the day (thereby requiring the Gootees to traverse between the two populations), were tested and issued grades.[2/] In

exchange for their assumption of these extra burdens, Mr. Andola proposed that, in addition to their existing salaries, the Gootees would each receive three hours of compensation——at a rate of approximately $20 per hour——for every workday, notwithstanding the fact that the Gootees would be spending more than three hours daily with the adult students. (In other words, the hourly pay would be "capped" at three hours per workday.) Of the genuine and reasonable belief that Mr. Andola's proposal was legitimate,[3/] the Gootees accepted the offer.

5. Before proceeding further, it is important to make two observations concerning the foregoing compensation arrangement. First, and as confirmed by the final hearing testimony of the School Board's witnesses, it was not unheard of in Monroe County for salaried teachers to receive additional, hourly pay for providing instruction to adult education students.[4/] Moreover, the disbursement of hourly pay to the Gootees, a practice that would continue unabated from 2001 through September 2009, was no secret; indeed, the authorization of hourly pay on an "as needed basis" is documented throughout the Gootees' personnel forms, which bear the initials or signatures of various School Board officials, including that of the deputy superintendent.[5/]

6. In or around 2007, Monique Acevedo replaced Mr. Andola as the School Board's director of adult education. As Mr. Andola's former secretary, Ms. Acevedo was aware that the

Gootees were receiving hourly pay, and there is no dispute that the arrangement continued with her approval.

7. At or about the time of Ms. Acevedo's promotion, the adult education department instituted a requirement that its instructors submit written, weekly timesheets. The timesheets, which indicated that the total hours worked per week for the adult program, were signed by the instructor and delivered to the secretary of the department, who, in turn, forwarded the document to Ms. Acevedo for approval. Thereafter, an office manager entered the hours into a computer system, which could then be viewed by the payroll department.[6/] Notably, the adult education timesheets related only to the hourly work performed in connection with that particular program; that is, the forms were not intended to document the time spent by salaried instructors in connection with their contractual work responsibilities.

8. Consistent with these procedures, and over the next several years, the Gootees submitted written timesheets to the adult education department. In accordance with the three-hour cap (put in place by Mr. Andola, and continued by Ms. Acevedo), the Gootees billed three hours per day, for a total of 15 hours weekly, on their timesheets. For informational and non-billing purposes only, the Gootees also indicated on the timesheets the span of time in which they were on campus and in the presence of adult students. Specifically, Ms. Gootee typically recorded

times of 8:15 a.m. through 3:45 p.m., while Mr. Gootee, who worked a shorter day, generally notated 8:15 a.m. or 8:30 a.m. through 1:00 p.m. However, it must be emphasized, once again, that these ranges, which were recorded solely on the adult timesheets, were not intended to reflect the amount of time the Gootees spent in connection with their salaried, contractual work. (For those duties, KWHS teachers, including the Gootees, were required to sign in and out of the workplace in a separate, daily log.)[7/]

9. Subsequently, in late March or early April of 2009, the School Board terminated Ms. Acevedo's employment. At that time, and on an interim basis, Jeff Arnott assumed Ms. Acevedo's duties as the director of the adult education program. Over the next five months, the Gootees continued to submit their weekly timesheets, which Mr. Arnott approved.[8/]

10. Thereafter, in September 2009, Mr. Arnott was appointed as the director of the adult education program on a permanent basis, at which point he gained access to the School Board's master schedule. From his examination of the schedule, Mr. Arnott learned that the Gootees' work for the adult program occurred during regular school hours, as opposed to some other time period that did not coincide with their salaried work schedule. Concerned with the "overlap" in the hours, Mr. Arnott immediately inquired of the Gootees (both of whom enjoyed

excellent reputations as professionals, a point Mr. Arnott conceded at hearing), who explained, correctly, that the arrangement had been ongoing for years with the approval of the prior directors.[9/] Nevertheless, Mr. Arnott reported the issue to the superintendent of schools, culminating in the initiation of the instant proceeding.

11. As noted earlier, the School Board called only two witnesses in this matter: Mr. Arnott, who had no involvement in the adult education department until 2009, some eight years after the Gootees began receiving the hourly pay; and Debra Henriquez, an employee in the School Board's payroll department.

12. Through Ms. Henriquez' testimony, the School Board attempted to establish that the payroll department was unaware of the overlap in the Gootees' hours——an arrangement the witness opines was improper——until September 2009. The School Board fails to recognize, however, that Ms. Henriquez' knowledge of the situation[10/] and her view of its legitimacy are of no moment; the issue, as framed by the Complaints, is whether the Gootees, in accepting the hourly compensation, acted with dishonest or fraudulent intent. It is concluded, for the reasons explained below, that the Gootees did not act with such intent.

13. Contrary to the School Board's suggestion, this is not a situation where an educator committed an obvious and indefensible act of impropriety, such as accepting bribes for

inflating grades, helping students cheat on the FCAT, or stealing money from the lunchroom cash register——behavior that could not be legitimately defended on the basis that it occurred with a supervisor's encouragement or approval. Here, the director of the adult program, an individual tasked with utilizing adult education funds,[11/] offered the Gootees extra pay (approximately $10,000 each per school year, a sum that is hardly conscience shocking) in exchange for their assumption of additional duties; that the work with the adults occurred during regular school hours does not change this fact, nor does it compel a rejection of the Gootees' credible and reasonable testimony that they believed in the arrangement's propriety. This is particularly so in the absence of any evidence that the Gootees' professional services contracts obligated them to accept the adult education students without any corresponding increase in compensation.

14. Finally, the undersigned rejects the School Board's contention that the Gootees' notations on their weekly, adult education timesheets were somehow fraudulent or dishonest. Notably, the entries recorded on the forms accurately reflected the spans of time, during regular school hours, in which the Gootees instructed the adult students——i.e., there is no evidence that the Gootees attempted to conceal the "overlap" by recording time periods when they were not dealing with the adult students, such as after the normal school day or during the evening.

Indeed, that the timesheet entries plainly indicated the existence of an overlap only further supports the Gootees' credible testimony that they believed in the arrangement's legitimacy.

B. Determinations of Ultimate Fact

15. It is determined, as a matter of ultimate fact, that Respondents are not guilty of failing to maintain honesty in their professional dealings.

16. It is determined, as a matter of ultimate fact, that Respondents are not guilty of submitting fraudulent information on documents connected with their professional dealings.

CONCLUSIONS OF LAW

A. Jurisdiction

17. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this case pursuant to sections 120.569 and 120.57(1), Florida Statutes.

B. Notice of Charges/Burden of Proof

18. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been

violated and the conduct which occasioned [said] violation." Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983)(Jorgenson, J., concurring).

19. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated. See Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dep't of Bus. & Prof'l Reg., 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

20. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996). 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. 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").

21. The charged employee's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

C. The Charges Against Respondents

22. Pursuant to section 1012.33(6)(a), Florida Statutes, a school board is authorized to suspend or dismiss a member of its instructional staff for "just cause," which is defined 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 to, regardless of adjudication of guilt, any crime involving moral turpitude.

§ 1012.33(1)(a), Fla. Stat. (2009). In addition, the violation of a school board rule can, in some instances, supply just cause for an educator's dismissal. See St. Lucie Cnty. Sch. Bd. v. Baker, Case No. 02-973, 2002 Fla. Div. Adm. Hear. LEXIS 1335, *61 (Fla. DOAH Dec. 31, 2002)("[O]ther wrongdoing, such as the violation of a district school board rule, may also constitute 'just cause'").

23. In the instant Complaints, the School Board alleges, first, that Respondents are guilty of violating School Board Policy 3210, which provides, in relevant part:

> 3210--Standards of Ethical Conduct
> An effective educational program requires the services of men and women of integrity, high ideals, and human understanding. The School Board hereby establishes the following as the standards of ethical conduct for all instructional staff members of the District:
>
> * * *
>
> 15. [M]aintain honesty in all professional dealings.
>
> * * *
>
> 22. [N]ot submit fraudulent information on any document in connection with professional activities.

24. As an overlapping charge, the Complaints can be fairly read to accuse Respondents of misconduct in office, an offense that, at the time of the alleged misconduct, was defined by the State Board of Education as a:

> [V]iolation 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.

Fla. Admin. Code R. 6B-4.009(3)(emphasis added).[12/]

25. In turn, the Code of Ethics of the Education Profession (adopted in Florida Administrative Code Rule 6B-1.001) and the

Principles of Professional Conduct for the Education Profession in Florida (adopted in Florida Administrative Code Rule 6B-1.006)[13/] provide in pertinent part 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.
>
> * * *
>
> 6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.
>
> * * *
>
> (5) Obligation to the profession of education requires that the individual:
>
> (a) Shall maintain honesty in all professional dealings.
>
> * * *

> (h) Shall not submit fraudulent information on any document in connection with professional activities.

26. "As shown by a careful reading of rule 6B-4.009, the offense of misconduct in office consists of three elements: (1) A serious violation of a specific rule that (2) causes (3) an impairment of the employee's effectiveness in the school system." Broward Cnty. Sch. Bd. v. Sapp, Case No. 01-3803, 2002 Fla. Div. Adm. Hear. LEXIS 1574, *18-19 (Fla. DOAH Sept. 24, 2002; BCSB Dec. 10, 2002). For ease of reference, the second and third elements can be conflated into one component: "resulting ineffectiveness." Id.

27. Based on the Findings of Fact contained herein, the School Board has not established that Respondents failed to maintain honesty in their professional dealings. On the contrary, and as explained previously, the credible evidence demonstrates that the Gootees accepted extra compensation in exchange for their performance of additional work——an arrangement that, notwithstanding the "overlap" in the hours, the Gootees reasonably believed was legitimate.[14/] See Brogan v. Leon, Case No. 93-7154, 1995 Fla. Div. Adm. Hear. LEXIS 4157, *15-16 (Fla. DOAH May 18, 1995)(concluding that the charge of failing to maintain honesty in professional dealings requires proof that the educator knowingly intended to deceive or defraud the school board).

28. The charge that the Gootees submitted fraudulent information on a professional document likewise fails, for there is no evidence that their entries to weekly timesheets were in any manner false or inaccurate, nor has the School Board shown that the Gootees acted with the intent to deceive. See Brogan v. Navarez, Case No. 97-3845, 1998 Fla. Div. Adm. Hear. LEXIS 5580, *17-18 (Fla. DOAH Feb. 17, 1998)(explaining that to prove the charge of submission of fraudulent information on a document in connection with professional dealings, "it must be shown not only that the teacher provided false or misleading information on the document in question, but also that the teacher knowingly did so with the intent to deceive"); cf. State Farm Mutual Auto. Ins. Co. v. Novotny, 657 So. 2d 1210, 1213 (Fla. 5th DCA 1995) ("The elements required to establish a claim of fraudulent misrepresentation are: (1) a knowingly false statement; (2) an intent that the statement will be acted on; (3) and detrimental reliance on the statement"); Gentry v. Dep't of Prof'l & Occupational Regs., 293 So. 95, 97 (Fla. 1st DCA 1974)(holding statutory provision prohibiting licensed physicians from making "misleading, deceptive and untrue representations in the practice of medicine" requires proof that the representations were made willfully).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Monroe County School Board enter a final order: dismissing the administrative complaints; immediately reinstating Respondents' employment; and awarding Respondents any lost salary and benefits.

DONE AND ENTERED this 4th day of November, 2013, in Tallahassee, Leon County, Florida.

EDWARD T. BAUER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of November, 2013.

ENDNOTES

[1/] As a part-time instructor, Mr. Gootee received 64 percent of a full-time salary.

[2/] See Final Hearing Transcript, pp. 90-91, 111.

[3/] See Final Hearing Transcript, pp. 93-94, 111-112.

[4/] See Final Hearing Transcript, p. 25, lines 13-20; p. 63, lines 14-15; p. 81, lines 1-7.

[5/] See Petitioner's Exhibit 2, pp. 20, 21, 23-24, 26, 28-33, 36, 41; Petitioner's Exhibit 6, p. 227-228, 230, 234-235, 238-239, 241-243, 248-250.

[6/] Pursuant to the School Board's procedures, copies of the timesheets were not forwarded to the payroll department. See Final Hearing Transcript, p. 54, lines 5-8.

[7/] The KWHS sign in/out log is found in Petitioner's Exhibit 15.

[8/] As with each of the Gootees' earlier timesheets, those presented to Mr. Arnott requested three hours of pay per workday. See Petitioner's Exhibit 3, pp. 111-120; Petitioner's Exhibit 10, pp. 317-327.

[9/] In its Proposed Recommended Order, the School Board argues that the "overlap" was "never approved by the [s]uperintendent," a proposition it claims is supported by the testimony of Debra Henriquez. The undersigned cannot agree that the record allows such a finding, for Ms. Henriquez' testimony establishes, at most, that the payroll department received no direction from the superintendent one way or the other concerning the issue. In any event, and more to the point, there is no evidence that the Gootees knew or should have known, during the period they accepted the additional compensation, that any relevant School Board employee was in the dark concerning the "overlap."

[10/] Should the School Board wish to assign blame for the payroll department's (purported) lack of knowledge of the "overlap," it need look no further than its own policies. As discussed elsewhere in this Order, the School Board's standard procedure required an office manager to enter each adult education employee's total, weekly hours into a computer system, which could then be viewed by the payroll department; oddly, no computer entry was made regarding the particular times of day in which the hours were worked, nor was a physical copy of the timesheet——which did provide such information——forwarded to the payroll department. See Final Hearing Transcript, pp. 53-54, 80, 83.

[11/] During the final hearing, Mr. Arnott testified as follows regarding the job responsibilities of the adult education director:

> My duties were basically just to make sure the teachers had the right curriculum, utilize the funds and, you know, create the

> master, the schedules. You know, help students with registration and so forth like that.

Final Hearing Transcript, p. 22 (emphasis added).

[12/] On July 8, 2012, rule 6B-4.009 was substantially revised and renumbered as Florida Administrative Code Rule 6A-5.056. However, as rule 6A-5.056 was not in effect on the date of Respondents' alleged misconduct, rule 6B-4.009 controls in this proceeding. See Miami-Dade Cnty. Sch. Bd. v. Mobley, Case No. 12-1852, 2013 Fla. Div. Adm. Hear. LEXIS 225, *11 n.4 (Fla. DOAH Apr. 17, 2013)("The most recent amendment to rule 6A-5.056, adopted on July 8, 2012, does not apply to this proceeding because the conduct at issue occurred before the amendment's effective date.").

[13/] On January 11, 2013, rules 6B-1.001 and 6B-1.006 were transferred to Florida Administrative Code Rules 6A-10.080 and 6A-10.081, respectively.

[14/] This Recommended Order should not be read as an affirmative endorsement of the "overlapping" compensation arrangement, which, by all accounts, was in place for no School Board employee other than the Gootees. Instead, the undersigned has concluded only that, under the particular circumstances presented, the Gootees possessed a genuine and reasonable belief that they were entitled to additional pay by virtue of their acceptance of extra responsibilities vis-à-vis the adult students——a finding that defeats the School Board's charges of dishonesty and fraud.

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.