STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-2437TTS

SERENA JONES,

Respondent.
_____/

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2013), before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on May 7 through 8, 2014, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Paul Gibbs, Esquire
Law Offices of Carmen Rodriguez
1450 Northeast Second Avenue
Miami, Florida 33132

For Respondent: Christopher J. Whitelock, Esquire
Whitelock and Associates, P.A.
300 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316

STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists, pursuant to section 1012.33(1)(a), Florida Statutes, for

Petitioner to suspend Respondent without pay and terminate her employment as a teacher.

PRELIMINARY STATEMENT

On or about January 2, 2012, Petitioner, Broward County School Board, took action against Respondent, Serena Jones, to suspend her without pay and terminate her employment as a teacher. Respondent timely requested an administrative hearing to contest Petitioner's action, and the matter was referred to DOAH to conduct a hearing pursuant to sections 120.569 and 120.57(1). This case was assigned DOAH Case No. 12-0778, but was dismissed on March 11, 2013, pending resolution of a related criminal proceeding against Respondent.

Following resolution of the criminal matter, on July 2, 2013, the parties jointly moved to reopen the case. Petitioner filed an Amended Administrative Complaint on July 12, 2013. The final hearing initially was set for September 24 and 25, 2013, but pursuant to the parties' Joint Motion for Continuance, was rescheduled for November 12 and 13, 2013.

On October 29, 2013, Petitioner filed a Motion for Summary Recommended Order Deeming Facts Established Consistent with Court Order before the Circuit Court in and for Broward County, Florida, seeking issuance of a Summary Recommended Order based on facts established in a dependency proceeding order issued by

the Circuit Court of Broward County. By Order dated November 22, 2013, the undersigned denied the motion.

Pursuant to the Joint Motion for Continuance, filed on November 4, 2014, the final hearing was again rescheduled for December 17-20, 2013. On December 13, 2013, the parties again requested continuance of the final hearing, and the final hearing was rescheduled for January 27-29, 2014. Pursuant to Petitioner's Emergency Motion for Continuance, filed on January 24, 2014, due to ongoing discovery disputes between the parties, the final hearing was rescheduled for May 7 and 8, 2014.

The final hearing was held on May 7 and 8, 2014. Petitioner presented the testimony of Detective Ann Suter, an investigator with the Broward County Sheriff's Office Special Victims Unit; Dr. Jason Shulman, a pediatric physician; D.B.J.; and D.S.J. Petitioner proffered Exhibit Numbers 1, 3A, 3B, 4, 8, 9, 12, 13, 14, and 21 for admission into evidence. Exhibit Numbers 3B, 9, and 12 were admitted without objection, and Exhibit Numbers 1, 3A, 4, 8, 13, 14, and 21 were admitted into evidence over objection. The court took official recognition of sections 827.03 and 39.01, Florida Statutes (2010).[1/] Respondent testified on her own behalf and presented the testimony of Steven Williams, principal at Driftwood Middle School; and David Golt, Chief of Police for the Broward County School

District. Respondent did not proffer any exhibits for admission into evidence.

The two-volume Transcript was filed on May 30, 2014,[2/] and the parties were given until June 9, 2014, to file their proposed recommended orders, then were granted an extension of time pursuant to Petitioner's motion. The Proposed Recommended Orders were timely filed on June 16, 2014, and the undersigned has duly considered them in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties

1. Petitioner is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within the School District of Broward County, Florida, pursuant to Florida Constitution Article IX, section 4(b), and section 1001.32.

2. Respondent has been employed as a teacher in the Broward County Public School District, pursuant to a professional services contract, for approximately five years. Before that, she was a teacher in the Miami-Dade County School System for approximately six years. During the timeframe relevant to this proceeding, the 2010-2011 school year, Respondent was employed as a language arts teacher at Driftwood Middle School.

3. The undisputed evidence established that Respondent is a very good teacher who enjoyed excellent rapport with students and parents, did not experience discipline problems in her classroom, and was very dependable and efficient. She routinely received "highly effective" teaching evaluations ratings.

4. Respondent is married to Darren Jones, Sr., and is the mother of three children, D.B.J., D.S.J., and D.J.J.[3/] At the time of the events giving rise to this proceeding, D.B.J. was 16 years old, D.S.J. was nine years old, and D.J.J. was six years old.

II. Events Giving Rise to this Proceeding

A. The December 26, 2010, Incident

5. The primary event that precipitated this proceeding occurred on or about December 26, 2010.

6. That day, Respondent, Darren Jones, D.B.J., D.S.J., and D.J.J. went to church. After they returned home, a dispute arose between D.B.J., Darren Jones, and Respondent regarding D.B.J.'s use of Facebook and other issues related to her behavior.

7. Over a period of approximately two years leading up to the December 26, 2010 incident, numerous disputes had arisen between D.B.J., Darren Jones, and Respondent over D.B.J.'s behavior. As a result, D.B.J. often was disciplined through both corporal and non-corporal forms of punishment. The

corporal punishment typically was administered by Darren Jones—— who stands six feet, five inches tall——using a belt, and consisted of beatings ranging from minor to severe.[4/]

8. When Darren Jones administered corporal punishment, Respondent typically was present and neither objected nor intervened to stop the punishment.

9. At the time of the December 26, 2010 dispute, the family was in the kitchen and Darren Jones was preparing dinner. As the dispute escalated, Darren Jones ordered D.B.J. to go upstairs to her parents' master bedroom to receive a beating.

10. D.B.J. went upstairs to prepare herself for the beating.[5/] At the time, she was wearing a long-sleeved shirt and jeans.

11. Darren Jones also summoned Respondent, D.S.J., and D.J.J. to the master bedroom to witness him beat D.B.J. D.S.J. and D.J.J. were forced to witness the beating so that they would understand what would happen to them if they misbehaved.

12. Darren Jones ordered D.B.J. to lie down on the bed. Using an extension cord, he repeatedly struck her on her hands, arms, shoulders, back, thighs, ankles, and buttocks. At some point during the beating, D.B.J. rolled off the bed and onto the floor in an attempt to escape the blows, but Darren Jones continued to strike her with the cord.

13. During this beating, Respondent was present and witnessed the entire episode but did not intervene to stop Darren Jones from beating D.B.J.

14. Respondent also did not excuse D.S.J. or D.J.J. from witnessing the beating.

15. During the course of the beating, D.B.J. urinated on herself. After the beating was over, she went to the bathroom to clean herself up and run cold water over her hands to help alleviate the pain and enable her to move her fingers.

16. Following the beating, D.B.J. was summoned downstairs for the family dinner. She testified, credibly, that she was injured to the extent that she had difficulty getting down the stairs, but neither asked for nor received assistance from anyone.

17. D.B.J. suffered severe pain during and after the beating. As noted above, she was so traumatized during the beating that she urinated on herself. She was severely bruised and suffered cuts on, and significant swelling of, various parts of her body.[6/] Her hands were so swollen that they were clenched and she was unable to fully open them or move her fingers for days after the beating. She continued to suffer swelling and pain for at least a month after the beating.

18. At no time on December 26, 2010, did Respondent check to see if D.B.J. was injured as a result of the beating. It was

not until the following day that Respondent became aware that D.B.J. had been injured, when she went upstairs to wake D.B.J. and noticed that she had not changed her clothing from the previous day. At that point, D.B.J. told Respondent she was injured and Respondent observed that D.B.J.'s skin was broken as a result of the beating. Respondent's explanation as to why she did not know that D.B.J. was injured until the following day is that D.B.J. did not tell her she was injured.

19. Upon discovering that D.B.J. was injured, Respondent gave D.B.J. ice to put on her hands and Neosporin cream for the cuts. Respondent also provided cream to D.B.J. to treat her bruises. Respondent did not contact a physician or otherwise seek medical attention for D.B.J.'s injuries.

B. Other Alleged Conduct

20. There is conflicting evidence regarding whether Darren Jones beat D.B.J. in January 2011. D.B.J. testified that in early January 2011, Darren Jones beat her with a belt and that Respondent was not in the room when the beating occurred. Respondent denied that Darren Jones beat D.B.J. in January 2011. D.S.J. testified that she did not recall Darren Jones beating D.B.J. in January 2011. On balance, the evidence does not persuasively establish that Darren Jones beat D.B.J. in January 2011. However, even if it were shown that such a beating did, in fact, take place, there is no credible evidence

establishing that Respondent actually witnessed the beating so as to have been in a position to intervene, had it become severe.

21. The credible evidence establishes that Darren Jones spanked D.J.J. with a belt on December 26, 2010, for sleeping in church and hitting D.S.J.

22. Although the evidence establishes that D.S.J. and D.J.J. may, at times, have been subject to corporal punishment administered by Darren Jones or Respondent, the evidence does not establish that such punishment rose to the level of abuse or that either child was harmed as a result of the punishment.

23. The persuasive evidence does not support a finding that a "pattern" of child abuse existed in the Jones' household or that Respondent participated in or allowed a pattern of abuse to occur.

C. The Investigation

24. On or about January 6, 2011, the Broward County Sheriff's Office ("BSO") received a complaint through the child abuse reporting system regarding the alleged abuse of D.B.J. by Darren Jones.[7/]

25. As a result, on or about January 11, 2011, a BSO Child Protective Services investigator and deputy were sent to the Jones' residence. The investigator interviewed D.B.J. and

observed her injuries, and ordered Respondent and Darren Jones to bring the children to the clinic for physical examination.

26. On the evening of January 14, 2011, Respondent and Darren Jones took D.B.J., D.S.J., and D.J.J. to the Nancy J. Cotterman Center ("NJCC"), where they were interviewed and physically examined by Detective Ann Suter and Dr. Jason Shulman.

27. Dr. Shulman is a pediatric physician who, as part of his medical practice, works with Broward County's Child Protection Team. Dr. Shulman was working at the NJCC on the night of January 14, 2011, when D.B.J., D.S.J., and D.J.J. were brought in for examination.

28. That night, Dr. Shulman examined D.B.J. and took 101 photographs of her body as part of the investigation to determine whether she had been subjected to abuse.

29. The photographs showed that as a result of the December 26, 2010 beating, D.B.J. had numerous scabs, marks, bruises, and scars on her hands, arms, shoulders, back, legs, thighs, ankles, and buttocks. Even though nearly three weeks had passed since she was beaten, some of the places on D.B.J.'s body where she was struck with the cord still were open or scabbed. Many of these scabs, marks, bruises, and scars were curvilinear in shape, showing the cuts and impressions left on and in D.B.J.'s skin by the looped extension cord used to beat

her. The photographs also showed swelling and extensive bruising and discoloration of D.B.J.'s body, particularly on her hands, ankles, back, thighs, and buttocks. At the time of the examination, D.B.J. still was experiencing pain from the beating. Although the testimony at hearing did not precisely establish how many blows Darren Jones landed on D.B.J.'s body,[8/] the photographic evidence appears to show as many as 60 discrete marks on her body made by the beating. Under any circumstances, the evidence clearly shows that the beating was not "quick" and consisted of far more than a few blows.

30. During his examination of D.B.J., Dr. Shulman interviewed her to determine how she had suffered the injuries. D.B.J. told Dr. Shulman that she had been beaten by her father with an extension cord.

31. After his examination and interview of D.B.J., Dr. Shulman prepared a report of findings in which he found, based on his medical examination and interview of D.B.J., that she had been severely physically abused by Darren Jones. Dr. Shulman's report recommended that D.B.J., D.S.J., and D.J.J. be removed from the home and provided safe alternative placement.

32. On January 14, 2011, D.B.J., D.S.J., and D.J.J. were removed from the Jones home and placed in the protective custody of ChildNet.[9/]

33. On or about January 15, 2011, Darren Jones was arrested and charged with aggravated child abuse, pursuant to section 827.03, Florida Statutes (2010), for the beating he inflicted on D.B.J. on December 26, 2010.

34. The criminal case against Darren Jones was disposed of by nolle prosequi in March 2013.

35. In March 2011, Respondent was arrested and charged with three counts of neglect of a child, pursuant to section 827.03(3)(a).

36. The criminal case against Respondent was disposed of by nolle prosequi in March 2013.

37. In September 2011, after Respondent and Darren Jones had received individual and family counseling, D.S.J. and D.J.J. were returned to reside in the Jones' home.

38. The Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Juvenile Division, determined in Case No. 2011-471 CJ-DP(A) that, pursuant to section 39.01(2), Florida Statutes, Darren Jones physically, emotionally, and/or mentally abused D.B.J. by beating her with an extension cord.[10/] The court ordered that D.B.J. be permanently removed from the Jones home and placed in foster care with the Department of Children and Families. D.B.J. remained in foster care until she no longer was a minor.[11/]

III. The Final Hearing

39. At the final hearing, Respondent claimed that in hindsight, she would have stopped Darren Jones' beating of D.B.J. had she known that he was going to use a cord or that D.B.J. would suffer continual pain as a result of the beating. Respondent claimed that she did not intervene at the time because, based on her own childhood experiences of being beaten by her mother, she did not view the beating rendered by Darren Jones on D.B.J. as constituting child abuse. Even after seeing the photographs of D.B.J.'s injuries taken by Dr. Shulman almost three weeks after the beating, she did not characterize it as "severe."

40. Respondent testified that had the beating gone on for what she considered an "excessive amount of time," she would have intervened. She characterized the beating as, rather, "a very quick discipline."

41. Respondent and her husband act as a team in raising their children and support each other, rather than intervening and undercutting each other, in disciplining the children. Respondent testified, credibly, that she is not afraid of her husband and does not believe he would have hit her had she intervened to stop the beating of D.B.J.

42. Respondent expressed regret at the turn of events resulting from the beating. She is sorry that D.B.J. was

injured by the beating, and clearly is sorry about the consequences of the beating——the arrests of her and Darren Jones, her husband's job loss and resulting financial difficulties, loss of their home and car, and loss of custody of their children for a period of time.

43. The sole evidence regarding the notoriety element of the immorality charge against Respondent consisted of a general statement by Driftwood Middle School principal Steven Williams that he was aware of the allegations regarding Respondent "based on the media" but was not familiar with the details of the case; no specific evidence was presented regarding the notoriety of Respondent's conduct. The record also is devoid of evidence showing that Respondent's conduct brought her or the education profession into public disgrace or disrespect and impaired her service in the community.

IV. Findings of Ultimate Fact

44. In this proceeding, Petitioner seeks to suspend Respondent without pay and terminate her employment as a teacher on the basis of just cause,[12/] pursuant to section 1012.33(1)(a), and Florida Administrative Code Rule 6A-5.056.[13/]

45. As more fully addressed below, Petitioner bears the burden of proof, by a preponderance of the evidence, to establish each element of each offense with which Respondent is charged.

46. Also as more fully addressed below, the determination whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged offense.

Immorality

47. Based on the evidence presented, it is determined that Petitioner did not prove that Respondent's conduct amounted to immorality, as defined in rule 6A-5.056(2).

48. There is no question that Respondent's conduct was inconsistent with the standards of public conscience and good morals. It is hard to envision that, absent duress or imminent threat, a person having a conscience and being of good moral fiber could witness his or her own child being severely beaten with an extension cord and not intervene to stop the beating—— regardless of the circumstances that precipitated the beating. This is particularly the case when that person is entrusted in his or her professional life with ensuring the safety of children. It is also hard to envision that a person having a conscience and being of good moral fiber would force nine- and six-year-old children to witness the beating.

49. However, the evidence does not establish the existence of the other elements necessary for a finding of immorality under rule 6A-5.056(2). Although there is some evidence generally establishing that there was media coverage of

Respondent's removal from her employment position, no specific evidence was presented regarding coverage of her underlying conduct. Thus, there is no evidence from which the undersigned can infer "notoriety." Further, Respondent's conduct took place in a completely private setting——her own home. Under these circumstances, impairment of service in the community cannot be inferred and must specifically be shown by the evidence.[14/] Here, the record is devoid of such evidence, so the undersigned cannot infer that this element is met.

50. Accordingly, it is determined that Respondent did not engage in conduct constituting immorality under rule 6A-5.056(2).

Moral Turpitude

51. It also is determined that just cause does not exist under section 1012.33(1)(a) to suspend and terminate Respondent on the basis of moral turpitude.

52. Unquestionably, Respondent's conduct in choosing not to intervene to stop Darren Jones' severe beating of D.B.J. with an extension cord, and in forcing her two younger children to watch their sister suffer the beating, involved acts of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general.

53. The undersigned rejects Respondent's claims that Darren Jones' beating of D.B.J. was a "quick discipline." The photographic evidence, supported by Dr. Shulman's testimony, establishes that D.B.J. was struck with the cord numerous times ——perhaps as many as 60, based on the photographic evidence——and in any event, more than 30 times. The sheer number of blows to D.B.J.'s body belies any credible claim that the beating was of short duration; this beating took place over a period of minutes. Respondent had more than ample time to intervene, but chose not to. Further, she subjected her two very young children to mental trauma by forcing them to witness their sister being beaten.

54. The undersigned also finds incredible Respondent's claim that she did not perceive Darren Jones' beating of D.B.J. as severe when it occurred. Darren Jones is a large man, approximately six feet, five inches tall. Using an extension cord, he struck D.B.J. numerous times with such force that even through her jeans and long-sleeved shirt, D.B.J. was so severely lacerated and bruised that almost three weeks later, she still was experiencing pain and bruising and her wounds had not fully healed. Respondent's conduct in standing by and watching a sixteen-year-old girl receive such a severe beating without intervening, while forcing nine- and six-year-old children to watch, is indicative of baseness, vileness or depravity in the

private duties, which, according to the accepted standards of the time, a man owes to his or her fellow man.

55. However, as more fully discussed below, section 1012.33(1)(a) requires, for a finding of just cause on the basis of moral turpitude, that the person be "convicted of or found guilty of, or [enter] a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude." § 1012.33(1)(a), Fla. Stat. (2010). Here, the criminal charges against Respondent were disposed of by nolle prosequi. She was not convicted of or found guilty of, and did not enter a plea of guilty to, any crime involving moral turpitude.

56. Accordingly, the undersigned is constrained to find that just cause, pursuant to section 1012.33(1)(a), does not exist to suspend Respondent without pay and terminate her employment on the basis of moral turpitude.

CONCLUSIONS OF LAW

57. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

58. In this proceeding, Petitioner seeks to suspend Respondent without pay and terminate her employment for just cause pursuant to section 1012.33(1)(a) and rule 6A-5.056.

59. Respondent is an instructional employee, as that term is defined in section 1012.01(2). Petitioner has the authority

to suspend and terminate instructional employees pursuant to sections 1012.22(1)(f) and 1012.33(1)(a) and (6)(a).

60. To do so, Petitioner must prove, by a preponderance of the evidence, that Respondent committed the alleged violations, and that such violations constitute a basis for suspension and termination. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

61. As noted above, whether Respondent committed the charged violations is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

62. Section 1012.33(1)(a), Florida Statutes(2010), provides in relevant part:

> (1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. 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 crime involving moral turpitude.

63. Rule 6A-5.056[15/] defines the bases for charges enumerated in section 1012.33(1)(a) and provides in pertinent part:

> 6A-5.056 Criteria for Suspension and Dismissal.
>
> The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, F.S. The basis for each of such charges is hereby defined:
>
> * * *
>
> (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.
>
> * * *
>
> (6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

Each of these grounds is addressed below.

Immorality

64. To support a finding of just cause to discipline a teacher on the basis of immorality under rule 6A-5.056(2), the evidence must establish both that: a) that the teacher engaged in conduct inconsistent with the standards of public conscience and good morals; and b) that the conduct was sufficiently notorious so as to [1] disgrace or bring disrespect to the individual or the teaching profession and [2] impair the teacher's service in the community. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

65. As discussed above, the evidence establishes that the first element of immorality is met. It cannot be seriously questioned that Respondent's conduct in declining to intervene in Darren Jones' beating of D.B.J. and in forcing D.S.J. and D.J.J. to witness the beating is inconsistent with the standards of public conscience and good morals.

66. However, Petitioner did not provide sufficient evidence to prove that the other elements of immorality are met. The only evidence presented regarding the notoriety element was the testimony of Principal Steven Williams, which showed only a general awareness on his part regarding the grounds for Respondent's removal from her teaching position. This evidence is not sufficient to show that Respondent's conduct was "widely and unfavorably known," and, thus, "notorious." St. Lucie Cnty.

Sch. Bd. v. Contoupe, Case No. 13-0410 (Fla. DOAH Nov. 7, 2013), St. Lucie Cnty. Sch. Bd. (Jan. 14, 2014); Miami-Dade Cnty. Sch. Bd. v. Diaz-Almarez, Case No. 12-3630 (Fla. DOAH July 30, 2013), modified in part, Miami-Dade Cnty. Sch. Bd. (Oct. 30, 2013); Broward Cnty. Sch. Bd. v. Deering, Case No. 05-2842, 2006 Fla. Div. Admin. Hear. LEXIS 367, at *13-14 (Fla. DOAH July 31, 2006). Further, even assuming that Respondent's conduct was "notorious," Petitioner did not present any evidence showing that Respondent's service in the community has been impaired——an element of the offense that cannot be inferred from the conduct itself in cases where, as here, the conduct occurred in a private setting. See Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127, 128 (Fla. 2d DCA 2000)(disallowing inference of impairment when conduct took place in private setting); see also McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996)(reversing school board order concluding that conduct constituted immorality where competent substantial evidence supported ALJ's finding that conduct did not impair individual's service in the community).

67. For these reasons, Petitioner did not meet its burden to prove, by a preponderance of the evidence, that Respondent's conduct constituted immorality under rule 6A-5.056.

68. Accordingly, Petitioner has not shown just cause under section 1012.33(1)(a) to suspend Respondent without pay and

terminate her employment on the basis of immorality.

Moral Turpitude

69. The evidence also does not support a determination that just cause exists under section 1012.33(1)(a) to suspend Respondent without pay and terminate her employment on the basis of moral turpitude.

70. Legislative intent is the polestar that guides a court's statutory construction analysis. Metro. Cas. Ins. Co. v. Tepper, 2 So. 3d 209, 213 (Fla. 2009). In determining the meaning of a statute, the court looks to the intent of the Legislature in enacting that statute. Carlile v. Game & Fresh Water Fish Comm'n, 354 So. 2d 362, 364 (Fla. 1977). When interpreting a statute and attempting to discern legislative intent, courts must first look to the actual language used in the statute. Joshua v. City of Gainesville, 768 So. 2d 432, 435 (Fla. 2000); Moonlit Waters Apartments, Inc. v. Cauley, 666 So. 2d 898, 900 (Fla. 1996).

71. Where a statute's language is clear and unambiguous, legislative intent must be derived from the words used in the statute without resort to rules of statutory construction. Therrien v. State, 914 So. 2d 942, 945 (Fla. 2005); Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 454-55 (Fla. 1992); Tropical Coach Line, Inc. v. Carter, 121 So. 2d 779, 782 (Fla. 1960).

72. Here, the plain language of section 1012.33(1)(a) requires, for a finding of just cause on the basis of moral turpitude, "being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication, any crime involving moral turpitude." § 1012.33(1)(a), Fla. Stat. (2010)(emphasis added).

73. The statute's plain language expressly limits the circumstances under which just cause on the basis of moral turpitude may be found to those where the person has been convicted of a crime involving turpitude, found guilty of a crime involving moral turpitude, or entered a plea of guilty to a crime involving moral turpitude.

74. As noted above, the criminal charges against Respondent were disposed of nolle prosequi, which means that the state dropped the charges and terminated the prosecution of its case against her. See Purchase v. State, 866 So. 2d 208 (Fla. 4th DCA 2004)(nolle prosequi constitutes dismissal of criminal charges). Respondent was not convicted or found guilty of any crime involving moral turpitude, and she did not enter a plea of guilty to a crime involving moral turpitude.[16/] Accordingly, the statute's express requirements for finding just cause on the basis of moral turpitude are not met.

75. Relying on the clause in section 1012.33(1)(a) stating that "[j]ust cause includes, but is not limited to . . . ,"

Petitioner asserts that the statutory construction canon ejusdem generis[17/] dictates that the non-exclusive list of offenses in the statute should be read to encompass acts of moral turpitude, since such acts bear a close affinity to the enumerated offenses. This position is contrary to well-established rules of statutory interpretation.

76. As noted above, where the statute's plain language is clear and unambiguous, there can be no resort to statutory construction. Here, the statute plainly defines and limits what is required——conviction, finding of guilty, or guilty plea——in order to find just cause on the basis of moral turpitude. Thus, there is no basis for resorting to ejusdem generis in this case.

77. Furthermore, ejusdem generis is inapplicable where the particular words in the statute embrace all objects of the class mentioned, thereby exhausting the class. Schleman v. Guaranty Title Co., 15 So. 2d 379 (Fla. 1943). That is, when the particular words in the statute exhaust a class——here, the specific circumstances under which just cause on the basis of moral turpitude may be found——the statute's general words must refer to words outside of that particular class. See Sperling v. White, 30 F. Supp. 2d 1246, 1253 (D.C. Cal. 1998), citing United States v. Mescall, 215 U.S. 26 (1909). Thus, the "including, but not limited to" clause in section 1012.33(1)(a)

cannot be read to expand the class of circumstances under which just cause may be found on the basis of moral turpitude.

78. Invoking ejusdem generis to expand the circumstances under which just cause on the basis of moral turpitude may be found also would violate the established principle that statutes must be interpreted and applied in a manner that gives meaning and effect to all of their provisions. Bennett v. St. Vincent's Med. Ctr., Inc., 71 So. 3d 828, 838 (Fla. 2011)("when a court interprets a statute, it must give full effect to all statutory provisions"); Dennis v. State, 51 So. 3d 456 (Fla. 2010)(it is a basic rule of statutory construction that the Legislature does not intend to enact useless provisions, and courts should avoid interpreting a statute in a way that would render part of it meaningless). Here, the specific words in section 1012.33(1)(a) limit the class of offenses involving moral turpitude that constitute just cause to those in which there is a conviction or finding of guilt, or a guilty plea, to a crime involving moral turpitude. Applying ejusdem generis in this case to include acts of moral turpitude would negate the express limits in section 1012.33(1)(a) that the Legislature has placed on the circumstances in which just cause may be found on the basis of moral turpitude.[18/]

79. Petitioner asserts that case law obviates the requirement in section 1012.33(1)(a) that there be a conviction

or finding of guilt or a guilty plea in order to find just cause on the basis of moral turpitude. However, Petitioner relies almost exclusively[19/] on cases interpreting an entirely different statute——section 1012.795 (and its precursors, sections 231.28 and 231.2615) codifying the grounds on which the Education Practices Commission may take disciplinary action against a teaching certificate.[20/]

80. In contrast to section 1012.33(1)(a), section 1012.795[21/] requires, and historically has required, only that the person be determined to have committed an act involving moral turpitude——not that there have been a conviction or guilty finding of, or guilty plea to, a crime involving moral turpitude. Consistent with the plain language of that statute, the cases Petitioner cites hold that it is not necessary that a teacher even be charged with, much less convicted of, a crime in order to be determined guilty of an act of moral turpitude. However, these cases interpret a completely different——and here, completely inapposite——statute that enumerates different circumstances and imposes a different standard on which discipline may be based. As such, these cases do not apply to this proceeding.[22/]

81. To the extent Petitioner posits that the "acts of moral turpitude" standard in section 1012.795 is imported into, or otherwise applies to, a just cause determination under

section 1012.33(1)(a) because cases brought under each of these statutes apply the same rule (rule 6A-5.056(6)[23/]) defining "moral turpitude," that position is rejected. The rule only describes conduct that constitutes "moral turpitude." Each of the statutes establish——in plain terms——the specific circumstances under which conduct constituting moral turpitude, as determined under the rule, is subject to discipline pursuant to that particular statute. Clearly, the rule does not, and cannot, have the effect of changing the plain language of section 1012.33(1)(a) to encompass acts of moral turpitude. See Willette v. Air Prods., 700 So. 2d 397, 399 (Fla. 1st DCA 1997)(rejecting argument that rule should be applied in a manner that is at odds with express statutory language); Dep't of Bus. Reg. v. Salvation, Ltd., 452 So. 2d 65, 66 (Fla. 1st DCA 1984) (administrative rule cannot enlarge, modify, or contravene provisions of statute).

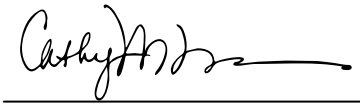
82. For these reasons, Petitioner did not demonstrate that just cause exists, pursuant to section 1012.33(1)(a), to suspend Respondent without pay and terminate her employment as a teacher on the basis of moral turpitude.

83. In sum, Petitioner has not demonstrated that just cause exists, pursuant to section 1012.33(1)(a), to suspend Respondent without pay and terminate her employment as a teacher.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Broward County School Board, enter a final order finding that there is no just cause, pursuant to section 1012.33(1)(a), Florida Statutes, to suspend Respondent without pay and terminate her employment; reinstating her employment as a teacher with the Broward County School System; and awarding back pay commencing on the date of her suspension.

DONE AND ENTERED this 15th day of July, 2014, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of July, 2014.

ENDNOTES

[1/] The 2010 versions of these statutes were officially recognized because they were the versions in effect at the time of the conduct at issue in this proceeding.

[2/] The first volume of the final hearing Transcript was filed with DOAH on May 23, 2014, and was not marked as Volume I of II. A Notice of Filing Transcript was issued by DOAH on May 27, 2014. In reviewing the Transcript, the undersigned realized that a second volume of the Transcript had not been filed. The court reporter was contacted and the second volume was filed with DOAH on May 30, 2014. Pursuant to Florida Administrative Code Rule, only when the complete document has been received by the office agency clerk is it deemed to have been filed. In this case, the complete Transcript was received on May 30, 2014, for purposes of commencing the time for filing proposed recommended orders under rule 28-106.216.

[3/] Hereafter, Darren Jones, Sr., is referred to as "Darren Jones" and the minor children are referred to by their initials.

[4/] D.B.J. characterized the corporal punishment she received over the years as ranging from a minor "pop" to a severe "beating" or "whooping." She characterized the beating she received on December 26, 2010, as a "super whooping." That beating was, in her words, "not one that you lightly forget."

[5/] D.B.J. credibly testified that to prepare herself for the beatings, she often would don layers of clothing to help cushion her body from the blows.

[6/] D.B.J.'s testimony regarding the severity of the injuries she suffered from the December 26, 2010, beating was corroborated by physical evidence in the form of photographs taken by pediatric physician Dr. Jason Shulman, who examined D.B.J. on January 14, 2011, at the Child Protective Services Center.

[7/] One of D.B.J.'s friends observed her injuries as they were dressing for gym class. The friend wanted to tell her mother, but D.B.J. begged her not to tell. Apparently, D.B.J.'s friend did report what she had seen and, ultimately, the Broward County Sheriff's Office was contacted.

[8/] In response to a question regarding how many times she was struck during the December 26, 2010 beating, D.B.J. testified, credibly, that she had "over 30 bruises."

[9/] ChildNet is the Department of Children and Families' designated Community Based Care lead agency in Broward and Palm Beach counties. ChildNet manages the system of foster care and related services for abused, abandoned, and neglected children in these counties.

[10/] The Dependency Order was admitted into evidence in this proceeding. It constitutes hearsay and was not shown to fall within an exception in sections 90.803 or 90.804, so cannot be used as the sole basis of a finding of fact in this proceeding. See § 120.57(1)(c), Fla. Stat. Petitioner seeks to rely on the Dependency Order to establish that Darren Jones committed child abuse as that term is defined in section 39.01(2); however, the child abuse determination in the Dependency Order is neither necessary for, nor relevant to, this proceeding. The record in this proceeding is replete with competent substantial evidence showing that Darren Jones willfully beat D.B.J. with an extension cord on December 26, 2010, and that the beating inflicted significant and lasting physical injury on her and harmed her.

[11/] D.B.J. describes her current relationship with her parents as a "good one on an adult level." She visits them, spends nights and weekends with them in their home, and attends church and family events with them.

[12/] The Amended Administrative Complaint generally cites Florida Administrative Code Rules 6B-1.001 and 6B-1.006 as grounds for suspending and terminating Respondent's employment. However, it does not specifically identify any provisions of either rule that Respondent is alleged to violate, and does not allege with any specificity why her conduct violates any provision of either rule. Given the breadth of topics addressed in these rules, the Amended Administrative Complaint fails to provide adequate notice to Respondent regarding the specific charges under rules 6B-1.001 and 6B-1.006 against which she would need to defend at the final hearing. See Seminole Cnty. Bd. of Cnty. Comm'rs. v. Long, 422 So. 2d 938 (Fla. 5th DCA 1982) (administrative complaint must be specific enough to inform the accused with reasonable certainty of the nature of the charge). Of further note is that, other than a general citation in the "preliminary statement," Petitioner's Proposed Recommended Order does not address either of these rules as a basis for its proposed recommendation to suspend Respondent without pay and terminate her employment.

[13/] In footnote 2 of its Proposed Recommended Order, Petitioner states that Florida Administrative Code Rule 6B-4.009, rather than rule 6A-5.056, applies to this proceeding. The correct rule citation is to rule 6A-5.056, 1983 version, as shown by the rule's history. See https://www.flrules.org/gateway/ruleNo.asp?id=6A-5.056. The rule originally was adopted as rule 6B-4.09 and was transferred to rule 6B-4.009 on April 5, 1983.

On that same date, rule 6B-4.009 was then transferred to rule 6A-5.056, so the latter is the correct citation to the rule. Petitioner is correct that the 1983 version of the rule applies to this proceeding, since Respondent's conduct occurred before July 8, 2012, the date the most recent amendment to the rule went into effect.

[14/] See Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127, 128 (Fla. 2d DCA 2000).

[15/] See supra note 13. The version of the rule pertinent to this proceeding went into effect on April 5, 1983.

[16/] Petitioner asserts that Respondent's admission that she agreed to physical punishment of D.B.J. and allowed the punishment to be conducted with an extension cord in the presence of D.S.J. and D.J.J. constituted a crime of moral turpitude. Apart from the obvious point that Respondent's admission is not a crime, the conduct to which she admitted was not determined to constitute a crime. In fact, the undisputed evidence establishes that the criminal charges against her were dropped. Petitioner also argues that Respondent's admission that it was reasonable to expect that striking D.B.J. with an extension cord would harm her establishes that she committed "neglect of a child" under section 827.03——a criminal statute. Again, Respondent's conduct was not determined to constitute a crime and the charges against her were dropped. Further, the undersigned obviously lacks the authority to determine that Respondent's conduct constituted a crime.

[17/] Ejusdem generis is a statutory construction canon that provides that, where the enumeration of specific things is followed by a more general word or phrase, the general phrase is construed to refer to a thing of the same nature as the preceding specific things. Eicoff v. Denson, 896 So. 2d 795 (Fla. 5th DCA 2005).

[18/] Moreover, even if statutory construction were appropriate in this case, the canon of expressio unius est exclusio alterius would dictate that the commission of acts of moral turpitude——an express ground for discipline under section 1012.795——must be excluded from the bases for finding just cause under section 1012.33(1)(a). It is well-established that when the legislature includes particular language in one section of a statute, but not in another section of the same statute, the omitted language is presumed to have been intentionally excluded. Maggio v. Fla. Dep't of Labor and Employ. Sec., 899 So. 2d 1074, 1080 (Fla.

2005); Bd. of Trustees of Fla. State Univ. v. Esposito, 991 So. 2d 924, 926 (Fla. 1st DCA 2008).

[19/] Petitioner cites Broward County School Board v. Smith, Case No. 05-3554 (Fla. DOAH Sept. 5, 2006), Broward Cnty. Sch. Bd. (Dec. 19, 2006), as support for its position that all that is required for just cause under section 1012.33(1)(a) is that Respondent have committed an act involving moral turpitude. The recommended order in that case, which was adopted without modification by the School Board, relied on cases brought under section 1012.795, which expressly only requires an act involving moral turpitude. The Smith order did not acknowledge the different standards in sections 1012.33(1)(a) and 1012.795 regarding moral turpitude and did not explain its reliance on case law interpreting a completely different statute than the one at issue in that proceeding. The undersigned conducted exhaustive administrative and judicial case law research on this issue and notes that a substantial majority of Division of Administrative Hearings orders addressing this issue have faithfully followed the plain language of section 1012.33(1) in declining to find that an act of moral turpitude is sufficient to find just cause under section 1012.33(1)(a). See, e.g., School Bd. of Osceola Cnty. v. Epstein, Case No. 92-1573, 1992 Fla. Div. Admin. Hear. LEXIS 6566 (Fla. DOAH July 27, 1992). The undersigned declines to follow Smith and adheres to the majority view.

[20/] In 2000, section 231.28, the precursor to section 1012.795 was renumbered as section 231.2615. Ch. 2000-301, § 27, Laws of Fla. As part of the enactment in 2002 of the "Florida K-20 Education Code," the Legislature repealed chapter 231 and enacted chapter 1012, including section 1012.795. Ch. 2002-387, §§ 757, 1058, Laws of Fla. Throughout these amendments, the statute consistently has required only that the person have committed an "act" of moral turpitude to be subject to discipline by the Education Practices Commission against his or her teaching certificate.

[21/] As noted above, the statutory language requiring only an act of moral turpitude as a basis for imposing discipline on a teaching certificate has remained consistent. Accordingly, references herein to section 1012.795 also are meant to refer to sections 231.28 or 231.2615 to the extent those versions of the statute were in effect at the time of the cases cited.

[22/] Petitioner cites Adams v. Professional Practices Council, 406 So. 2d 1170 (Fla. 1st DCA 1981), a case brought under

section 231.28 (the precursor to section 1012.795), involving discipline against a teaching certificate. There, the court noted that teachers traditionally are held to a high moral standard in a community. A substantial body of case law establishes that this is indeed the case. However, that does not justify applying an inapplicable statutory standard in this case to arrive at a particular result.

[23/] See note 13, supra.

COPIES FURNISHED:

Robert Runcie, Superintendent
Broward County School Board
600 Southeast 3rd Avenue
Fort Lauderdale, Florida 33301

Christopher J. Whitelock, Esquire
Whitelock and Associates, P.A.
300 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316

Carmen Rodriguez, Esquire
Law Offices of Carmen Rodriguez, P.A.
Suite 411
15715 South Dixie Highway
Palmetto Bay, Florida 33157

Pam Stewart, Commissioner
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Matthew Carson, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

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.