

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SARASOTA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-2339TTS

DOUGLAS S. O'CONNELL,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held October 6 through 9, 2014, in Sarasota, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Robert K. Robinson, Esquire
Kirk Pinkerton
6th Floor
240 South Pineapple Avenue
Sarasota, Florida 34236

For Respondent: Douglas S. O'Connell, pro se
7141 Jarvis Road
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STATEMENT OF THE ISSUE

Whether just cause exists to terminate Respondent from his employment with the Sarasota County School Board.

PRELIMINARY STATEMENT

By correspondence dated May 1, 2014, the Sarasota County School Board Superintendent, Lori M. White, informed Respondent, Douglas O'Connell, that a recommendation seeking the termination of his employment would be submitted to the Sarasota County School Board (Petitioner or School Board) for appropriate action. In response to the May 1 correspondence, Respondent timely requested that his case be "heard by the Florida Division of Administrative Hearings." By correspondence dated May 16, the matter was forwarded to the Division for a disputed fact hearing. The final hearing was initially set for August 28 and 29, 2014. On August 13, Petitioner filed an unopposed Motion to Continue the Final Hearing and requested four days for the hearing, instead of the original two days requested. The motion was granted and the cause was rescheduled for final hearing on October 6 through 9.

At the final hearing, Petitioner called Al Harayda, Edwina Oliver, Rachel Shelly, Brad Porinchak, Respondent, Tara Lara, D.D., S.N., K.S., J.W., A.G., and D.G. to testify.^{1/} Respondent testified on his own behalf and called Darby Larkin, Carlos Hernandez, Ana Espina, Edgar Vasquez, Michele Bluestone, Gail Foreman, Lillian Migano, Betty Hamilton, Rachel Shelley, Ernie Daigle, Lori White, Trisha Allen, Barry Dubin, Al Harayda, Edwina Oliver, and the students listed above to testify on his behalf.^{2/}

Petitioner's Exhibits 1 through 54,^{3/} and 57 and 58^{4/} were admitted into evidence. Respondent's Exhibits 4, 5, 7,^{5/} 8, and 10 were admitted into evidence.

At the conclusion of the hearing, Petitioner's counsel requested additional time in which to file proposed recommended orders (PROs). Respondent did not oppose the request.

The seven-volume Transcript of the proceeding was filed with the Division on October 28, 2014. On October 28, a Post-hearing Order was issued wherein the parties were notified that the Transcript had been filed and their respective PROs were to be filed before 5:00 p.m. on November 25. The parties timely submitted their PROs. To the extent that Respondent's PRO contained new testimony or evidence, not subject to cross-examination, that information has not been considered. Otherwise, both PROs have been considered in the preparation of this Recommended Order.

Unless otherwise noted, all references to Florida Statutes shall be the 2014 edition.

FINDINGS OF FACT

1. Petitioner is the entity charged with the duty to operate, control, and supervise the public schools within Sarasota County, Florida.

2. At all times pertinent to this case, Respondent was employed by the Sarasota Board as a teacher. Respondent is

certified to teach biological sciences grade 6 through 12. Respondent is not certified to teach reproductive health or health opportunities through physical education classes. Respondent was reassigned to the Landings,^{6/} the School Board's administrative offices during the course of the investigation.

3. On May 1, 2014, Superintendent White executed a letter to Respondent which provided in part:

It has been reported to me by Dr. Rachel Shelley, Principal of Booker High School, that you have been insubordinate by not maintaining a professional learning environment with your students. It is reported that progressive discipline has occurred; however, these interventions have not been successful.

You have grieved the initial proposed termination set for March 19, 2014 and on April 29, 2014; you were notified that this grievance was denied. Accordingly, I will recommend to the School board that it terminate your employment effective May 21, 2014. The School Board will vote to accept or reject my recommendation at its May 20, 2014 meeting. The meeting will be held at 1980 Landings Boulevard, Sarasota, Florida at 3:00 p.m.

Background:

4. Respondent was hired to teach integrated science to ninth-grade students at Booker High School (Booker) beginning in the 2001-2002 school year. Respondent taught at Booker for three years under Principal Jan Gibbs.

5. At the beginning of the 2004-2005 school year, Respondent became the dean of a newly created middle school called Student Leadership Academy (SLA). Respondent worked at SLA for a year and a half. In the spring of 2006, Respondent transferred to and taught honors biology at Riverview High School.

6. Respondent returned to Booker for the 2006-2007 school year under Principal Jill Dorsett. During the 2008 spring break, Principal Dorsett was reassigned to the Landings, and Constance White-Davis became Booker's principal. Principal White-Davis served Booker for several years.

7. During the 2008-2009 school year, Assistant Principal (AP) Edwina Oliver served as a teacher evaluator of Respondent. In April 2009, AP Oliver discussed with Respondent certain guidelines and expectations for teaching at Booker. AP Oliver reduced her comments to a memorandum of instruction (memo) to Respondent. This memo was not considered as discipline, but rather a reminder to Respondent of the guidelines and expectations for Booker teachers. The reminders included: responsibilities of assigned students according to Smartweb;^{7/} effective use of instructional time;^{8/} and consistent enforcement of policies related to student's expectations.^{9/}

8. In March 2010, AP Oliver issued a verbal reprimand to Respondent regarding his involvement in a Facebook exchange with

a female student. During the Weingarten hearing,^{10/} Respondent admitted that R.P. was a student in his classroom, and it probably wasn't the best idea that he responded to a female student's Facebook posting by providing his cell phone number. Respondent was evasive in answering questions at the hearing regarding this incident; yet, he asserted that neither he nor R.P. contacted one another after Respondent supplied his cell number.

Principal Rachel Shelly's Tenure:

9. When Ms. Shelley began her tenure as Booker's principal, she devoted her first year to listening, watching, and meeting with administrators, lead teachers, teachers, parents, and community members. Principal Shelley found Respondent to be jovial, social, highly intelligent (in that he knew his curriculum), and very popular among the students. At some point AP Oliver shared with Principal Shelley her concerns regarding Respondent and his teaching style. AP Oliver was concerned that Respondent showed a lot of videos in his classroom, that he allowed students to come and go at will, and that he lacked high expectations for his students.

10. Principal Shelley maintains high expectations for all Booker students and teachers. In order for Booker students to achieve their highest potential, Principal Shelley needs highly effective teachers who will "set and consistently maintain high

expectation[s].” Booker (as all public schools in Florida) is mandated to teach to the Florida Education Accomplished Practice (FEAP) standards. FEAP requires that teachers must know how to do certain things and be able to teach those things to students. In order to meet these high standards, Principal Shelley tries to hire highly effective teachers in order for her students to advance.

11. In April 2013, Respondent was placed on administrative leave while the school district conducted an investigation into an alleged battery of a student. A female student came forward and alleged that while she was alone in a classroom/preparation room grading papers for Respondent, Respondent brushed by her and grabbed her butt. The student reported the incident to Principal Shelley, who immediately instituted the district protocol by removing Respondent from the classroom environment. Respondent was instructed to wait for further instructions from Principal Shelley. Principal Shelley notified law enforcement via the Booker school resource officer, and a criminal investigation was conducted. For the remainder of the 2012-13 school year, Respondent worked at the Landings.

12. Upon completion of the district’s investigation, it was determined that Respondent had violated two school policies: allowing a student to grade other students’ papers; and allowing a student to be alone in a classroom/preparation room.

Respondent was suspended from the classroom for five days without pay. He served the suspension between October 16 and October 22, 2013.

13. In late September 2013, the criminal charges against Respondent were dropped, and he was allowed to return to the classroom with specific expectations regarding his classroom teaching and management style. One specific instruction given to Respondent was that he was not to allow unassigned students in his classroom.

14. The evidence clearly demonstrated that Respondent allowed a male student, K.C., who was not assigned to Respondent, to enter Respondent's classroom during Respondent's lunch/planning period. K.C. remained in Respondent's classroom approximately 10-15 minutes. Respondent did not ask K.C. for a hall pass. Principal Shelley gave Respondent a verbal warning regarding his misrepresentation of the facts surrounding K.C.'s classroom visit.

15. In November 2013, Principal Shelley conducted a walk-through of Respondent's classroom. While there, Principal Shelley noted that Respondent's lesson plans were not completed or available for viewing, and that students were eating in the classroom. Respondent was advised of these issues.

16. In December 2013, Principal Shelley conducted a Weingarten hearing regarding the number of labs that Respondent

was conducting in his classes. Principal Shelley directed Respondent to implement hands-on labs as required by the physical science curriculum, as she found that Respondent was not conducting the requisite number of labs.

17. In January 2014, during Respondent's marine science class, Respondent showed human pictures of male and female genitalia infected with the human papillomavirus (HPV). Respondent thought it was a "teachable moment" for juniors and seniors in high school. He continued to state something to the effect that if the students weren't going to abstain from sex, they should use "condom sense." Respondent admitted it was "a huge lapse in judgment," "it was not in any way related to marine science" and he was "deeply sorry if [he] offended any student or parent."

18. Respondent admitted that he engaged in a conversation with students regarding "BJ's and Costco."^{11/} One student, K.S. (also known as K.L.R.S.), credibly testified that Respondent engaged in a conversation with students acknowledging that he (Respondent) liked Hispanic girls. K.S. was also distressed when Respondent winked at her following a comment about Respondent liking curly-haired Hispanics. Additionally, Respondent admitted to making sexually charged statements about his wife and/or his preference for Latin women. Even if those statements were taken

out of context, Respondent should not have engaged in these conversations with students.

19. A female student was offended by Respondent's actions and reported them to a teacher, who in turn encouraged the student to report them to Principal Shelley. Once Principal Shelley heard the allegations, she immediately implemented the district protocol and relieved Respondent of his teaching responsibilities. After the district conducted another investigation, Superintendent White issued the termination letter to Respondent.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

21. The superintendent of the School Board has the authority to recommend to the School Board that an employee be terminated from employment. §§ 1001.32(3) and 1012.27(5), Fla. Stat.

22. Petitioner is responsible for the operation, control, and supervision of the free public schools in Sarasota County, Florida. Art. IX, § 4(b), Fla. Const.; and § 1001.32(2), Fla. Stat. Petitioner has the authority to terminate the employment of a teacher. See § 1012.22(1)(f), Fla. Stat.

23. Petitioner bears the burden of proving by a preponderance of the evidence that "just cause" exists to terminate Respondent's employment. 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). Preponderance of the evidence is evidence that "more likely than not" tends to prove a proposition. Gross v. Lyons, 763 So. 2d 276 (Fla. 2000).

24. Respondent is considered an educational employee. § 1012.01(2), Fla. Stat.

25. "Just cause" is the standard of discipline applied to actions involving instructional personnel. Just cause is defined in section 1012.33(1) in pertinent part as:

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, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, 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.

26. Further, section 1012.33(6) provides in pertinent part:

Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a). The district school board must notify the employee in writing whenever charges are made against the employee and may suspend such person without pay; but, if the charges are not sustained, the employee shall be immediately reinstated, and his or her back salary shall be paid.

27. Florida Administrative Code Rule 6A-5.056(4) provides the following definition for "gross insubordination":

the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

28. Malfeasance is defined as misconduct or wrongdoing; especially, by a public official. Misfeasance is defined as the improper and unlawful execution of some act that in itself is lawful and proper. Merriam-Webster Am. Heritage Dictionary of the English Language (5th ed. 2014).

29. Respondent admitted the salient facts of this case. Respondent engaged in inappropriate communications with students (via social media and during class time), allowed a student to grade other students' papers, allowed students to eat in his classroom, allowed students to enter his room without proper authorization, and showed an inappropriate slide of male and

female genitalia infected with the HPV virus to a class of students without proper authorization or parental permission. Petitioner satisfied its burden and proved by a preponderance of the evidence that Respondent did not maintain a professional learning environment for his students.

30. Having considered all of the facts set forth above, the undersigned concludes that termination of employment is appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner terminate Respondent's employment as a classroom teacher for Sarasota County School Board.

DONE AND ENTERED this 22nd day of December, 2014, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 2014.

ENDNOTES

1/ The students who testified are all minors; in order to protect their privacy, the Recommended Order refers to each minor student by his or her initials.

2/ Both parties listed some of the same witnesses. To provide an orderly hearing flow and allow each party the opportunity to elicit the direct testimony of each witness, the undersigned allowed cross examination to go beyond the direct examination.

3/ Exhibit 3 appears to be a draft verbal reprimand as it is dated March 24, 2010, yet the body of the memo contains the following: "On March 18, 2009 we met for a Weingarten" Neither party objected to or pointed out this date discrepancy. Exhibits 7 and 46 were admitted over objection by Respondent.

4/ Petitioner's Exhibit 58 was originally produced as Respondent's Exhibit 11, an April 11, 2014, psychological evaluation of Respondent. However, the evaluation contained several redacted statements. Respondent was directed to produce an unredacted copy of the evaluation on or before October 20, 2014, for inclusion in the record of this proceeding. The unredacted copy was filed on October 21, 2014. Both parties are reminded of the privacy requirements regarding private health information.

5/ Exhibit 7 was admitted over objection.

6/ The Landings is a complex of four buildings that comprise the main offices of the Sarasota County School Board.

7/ This means that teachers are to have only those students assigned to their classroom; and that teachers are not to allow students from other classes into a classroom without permission.

8/ This means instructional teaching from bell to bell, and in the event the lesson is completed, continue using instructional time for remediation or enrichment opportunities.

9/ In its former building, Booker had a "major problem" with rats, bugs and insects. When Booker moved into its new facility, a prior administrator (not Principal Shelley) established a rule of "No eating in the class." Respondent did not enforce that rule. Additionally, there was a rule of "no technology in the classroom," which Respondent did not enforce. The "no technology in the classroom" rule was later revised.

^{10/} A Weingarten hearing is conducted as a fact-finding meeting where an employee is asked to attend and answer questions about whatever situation is being investigated. The employee may appear with or without representation. Based on the facts obtained during a Weingarten hearing and the investigation, a determination is made whether any disciplinary action is necessary.

^{11/} The reference to "BJ" is a blow-job. There was no sexually charged reference provided for "Costco" during the hearing.

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.