

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOM GALLAGHER, as Commissioner)
of Education,)
)
 Petitioner,)
)
vs.) Case No. 00-3718PL
)
VICTORIA LAUBACH,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on November 15, 2000, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: William R. Scherer, III, Esquire
Conrad & Scherer
633 South Federal Highway
Post Office Box 14723
Fort Lauderdale, Florida 33302

For Respondent: Victoria Laubach, pro se
4601 Southwest 42nd Terrace
Fort Lauderdale, Florida 33314

STATEMENT OF THE ISSUE

The issue presented is whether Respondent is guilty of the allegations contained in the Administrative Complaint filed

against her, and, if so, what disciplinary action should be taken against her, if any.

PRELIMINARY STATEMENT

On July 20, 2000, Petitioner Tom Gallagher, as Commissioner of Education, issued an Administrative Complaint against Respondent Victoria Laubach, alleging that she had violated certain statutes and rules regulating her conduct as a teacher, and Respondent timely requested an evidentiary hearing regarding the allegations in that Administrative Complaint. Thereafter, this cause was transferred to the Division of Administrative Hearings to conduct the evidentiary proceeding.

At the commencement of the final hearing, Respondent's husband, Harold Laubach, was accepted as Respondent's qualified representative to represent her in this proceeding.

Petitioner presented the testimony of Victoria Kaufman, Cindy Dean, Keith Span, Dennis Morrison, Akilah Singletary, and Jennifer Bass Glenn. Respondent testified on her own behalf and presented the testimony of Julia McGritty. Additionally, Respondent's composite Exhibit numbered 1 was admitted in evidence.

Both parties submitted proposed recommended orders after the conclusion of the final hearing. Those documents have been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. Respondent holds Florida Educator's Certificate 762313, covering the area of varying exceptionalities, valid through June 30, 2004. At all times material hereto, Respondent was employed as a varying exceptionalities teacher by the Broward County School Board. She was assigned to the Wingate Oak Center, a school for multiply-handicapped and mentally-handicapped students, ages five through twenty-two.

2. During the 1998-1999 school year, Respondent taught autistic students, having six to nine students in her class. Mary, one of those students, was very aggressive. She physically attacked teachers, paraprofessionals, and other students. She was non-verbal and communicated by using hand signals.

3. A special system for disciplining autistic students was in place at Wingate Oak Center. The professional management crisis system, an intervention system, was comprised of four steps: (1) crisis prevention; (2) de-escalation; (3) actual crisis intervention in a physical crisis; and (4) post-crisis intervention, returning the student to his or her activity. The first two steps were the responsibility of the classroom teacher.

4. If a child continued his or her disruptive, aggressive, or self-injurious behavior despite the classroom teacher's use

of the first two steps, any staff member would press a buzzer in the room and yell "Code Red." In the front office of the school, the intercom would flash the room number, and the secretary in attendance would announce "Code Red" throughout the entire school.

5. The Code Red team composed of administrators, staff, and persons certified in professional crisis management would respond by immediately going to the room where the teacher or other staff member needed assistance in controlling the child. Certification was required because physical intervention needs to be accomplished in a safe and effective manner that does not embarrass the student. The Code Red team uses personal safety techniques and/or immobilization techniques to keep the student from hurting himself or herself and/or transportation techniques if the student requires being transported to another area to calm down.

6. Although Respondent had been trained in the required techniques, her certification expired prior to the 1998-1999 school year.

7. Respondent worked closely with Mary's parents and conferred with them regularly. Mary wore a hair band and her hair in a ponytail. When Mary misbehaved in class, a technique that worked well was to remove Mary's hair band and mess up her hair. Mary was told that if she behaved, her hair band would be

returned and her hair would be brushed. Mary liked the positive reinforcement of having her hair brushed and wearing her hair band, so she usually stopped misbehaving.

8. On February 18, 1999, Mary threw her desk aside and started to attack another student. Respondent handed her the "comfort" towel to calm her down but that did not work. Instead, Mary started kicking Respondent and pulling Respondent's hair and clothes. As Mary pulled at her, they both fell on the floor. Respondent told the paraprofessional to take the other students to the other side of the room and to call Code Red. The paraprofessional did so.

9. Respondent kept trying to calm Mary down and to break loose from Mary. Each time she was successful in breaking loose, Mary grabbed Respondent's hair and clothes and began kicking her again. Respondent attempted to restrain Mary so she could not grab Respondent's hair and clothes again. She managed to pin Mary down and calm her.

10. When the Code Red team entered Respondent's classroom, Mary was lying on the floor on her back. Respondent was straddling Mary, with a knee on the floor on each side of Mary, holding Mary's arms in a crossed position across Mary's chest. Mary was calm and quiet. Respondent was not sitting on Mary.

11. Neither Respondent nor Mary suffered any injury during their physical encounter.

12. Respondent was reported for failing to follow school policy by restraining Mary herself.

13. Corporal punishment is forbidden at Wingate Oaks and by Broward County School Board policy. Respondent did not administer corporal punishment to Mary that day. She merely defended herself by restraining Mary to keep Mary from injuring herself, Respondent, or anyone else.

14. Although Respondent failed to follow the Code Red protocol on that day by waiting for the Code Red team to arrive to physically restrain Mary, the record in this cause suggests that was not an option since Mary was kicking Respondent and pulling Respondent's hair and clothes.

15. Respondent did not pull Mary's hair as a form of discipline or corporal punishment.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

17. The Administrative Complaint filed in this cause alleges that Respondent pulled Mary's hair and sat on her, thereby using inappropriate disciplinary and restraining techniques. It alleges, therefore, that Respondent has violated Sections 231.28(1)(f) and (i), Florida Statutes, and Rules 6B-1.006(3)(a) and (e), Florida Administrative Code.

18. The law is well settled that Petitioner must prove its allegations by clear and convincing evidence. The evidence in this cause is neither clear nor convincing.

19. The Administrative Complaint alleges that Respondent "pulled on" Mary's hair on February 11, 1999, "and several other times." No evidence was offered that Respondent "pulled on" Mary's hair on February 11, 1999, and the allegation that such occurred "several other times" is insufficient to place Respondent on notice as to the dates she allegedly committed inappropriate conduct. Further, although Respondent admits she removed Mary's hair band in order to modify Mary's behavior by brushing her hair and returning the hair band, this technique was used effectively by others as well. Such a technique is quite different than pulling Mary's hair, which would be inappropriate.

20. The Administrative Complaint further alleges that Respondent sat on Mary "with her whole weight" on March 1, 1999. No evidence was offered as to any conduct by Respondent on March 1, 1999, and no evidence was offered that Respondent ever sat on Mary with her full weight. Although Respondent admits and the evidence revealed that Respondent straddled Mary on February 18, 1999, to stop Mary's continuous attack on her, no one testified that Respondent sat on Mary "with her whole weight."

21. Section 231.28(f), now Section 231.2615(f), Florida Statutes, authorizes disciplinary action against a teacher who has been found guilty of personal conduct which seriously reduces her effectiveness as an employee of the school board. Petitioner has failed to prove that Respondent was guilty of such conduct. Additionally, no evidence was offered that Respondent's effectiveness as an employee has been reduced.

22. Section 231.28(i), now Section 231.2615(i), Florida Statutes, prohibits violating the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules. Rule 6B-1.006, Florida Administrative Code, contains the Principles of Professional Conduct.

23. Rule 6B-1.006(3)(a) prohibits the failure to make reasonable effort to protect a student from conditions harmful to learning and/or to the student's mental health and/or physical safety. Petitioner has failed to prove that Respondent violated this provision. Respondent's conduct in removing Mary's hair band was not a condition harmful to Mary. Further, Respondent's restraining of Mary on February 18, 1999, was conduct specifically designed to protect Mary, Respondent, and the other students.

24. Rule 6B-1.006(3)(e) forbids a teacher from intentionally exposing a student to unnecessary embarrassment or

disparagement. No evidence was offered that Mary felt embarrassed or disparaged.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding Respondent not guilty and dismissing the Administrative Complaint filed against her in this cause.

DONE AND ENTERED this 22nd day of January, 2001, in Tallahassee, Leon County, Florida.

LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of January, 2001.

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.