

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 02-0933
)
SAKINA A. JONES,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, this cause came on for formal hearing on June 19, 2002 and July 23, 2002, in Jacksonville, Florida, before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings. The appearances were as follows:

APPEARANCES

For Petitioner: Ernst D. Mueller, Esquire
City of Jacksonville
Office of the General Counsel
117 West Duval Street
Suite 480
Jacksonville, Florida 32202

For Respondent: David A. Hertz, Esquire
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, Florida 32207

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether the Petitioner/Agency has established by preponderant

evidence that there was just cause to dismiss Sakina A. Jones, the Respondent, for alleged misconduct in relation to her teaching of students in alleged violation of Rules 6B-1.006(3)(a), and 6B-1.006(3)(e), Florida Administrative Code.

PRELIMINARY STATEMENT

On February 13, 2002, the Respondent was issued a Notice of Termination of Employment Contract and immediate suspension without pay by the Duval County School Board (Petitioner; "District"). She was charged with violating Rules 6B-1.006(3)(a), and 6B-1.006(3)(e), Florida Administrative Code, by allegedly failing to make reasonable efforts to protect students from conditions harmful to learning and to their mental or physical health or safety as well as intentionally exposing students to unnecessary embarrassment or disparagement. These charges were specifically involved in some seventeen specific descriptions of conduct which allegedly violated these two Rules, as set forth in the charging document or letter Notice of Termination, all of which are alleged to have occurred during the 2001-2002 school year which commenced August 7, 2001. The relevant time period ran through approximately November 19, 2002.

The Respondent requested a formal proceeding and hearing concerning these charges. The cause was ultimately transmitted

to the Division of Administrative Hearings and the undersigned Administrative Law Judge for adjudication.

The cause came on for hearing as noticed. The hearing was conducted on the above dates. The Petitioner school district called ten witnesses in its case in chief and presented fourteen exhibits, all of which were admitted into evidence. The Respondent, Sakina Jones, presented the testimony of three witnesses. In addition to her own testimony she presented the testimony of Samuel Corlew and Felicia Johnson. The Respondent submitted no exhibits into evidence. Upon concluding the proceeding the parties obtained a Transcript thereof and timely filed Proposed Recommended Orders, after stipulating to an extension of time. The Proposed Recommended Orders have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is the Duval County Florida School District or "School Board" charged with regulating the practice standards for teachers and the manner of practice of teachers who are employed by it in the Duval County School District system. The Respondent is licensed to teach in Florida, holding Florida Educator Certificate No. 831562, effective from July 1, 2000 through June 30, 2002. The Respondent has a Bachelor's Degree in Psychology received on December 11, 1998. She has worked as a substitute teacher for the Duval County School

District between approximately September 4, 1998 and August 9, 2000, after which time she became a full-time elementary teacher at Annie R. Morgan Elementary School.

2. The Respondent has a Bachelor's Degree in Psychology. Her training and experience in the field of education beyond college, at which she had no academic training as an educator, at the point she commenced her second year of teaching at Annie R. Morgan Elementary School, in August 2002, included the following:

- (a) substitute teaching experience at elementary schools.
- (b) teaching ESE students at DuPont Middle School as a substitute teacher.
- (c) participation in the Teacher Induction Program during the 2000-2001 school year while full time teaching at Annie R. Morgan Elementary School.
- (d) having a designated mentor (Mrs. Shipley) from whom to seek guidance.
- (e) completion of a college level introduction to education course while teaching full time during the 2000-2001 school year.
- (f) completion of a course in "Teaching Diverse Populations" in the summer of 2001.
- (g) receiving a book called "Positive Discipline."
- (h) attending a faculty meeting on classroom discipline which focused on steps that could be taken in the classroom before sending a child to the principal's office.

The Respondent had no training in the specifics of teaching and disciplining either ESE students or the educable mentally handicapped (EMH) students which she was teaching at times pertinent to this case.

3. The Teachers' Induction Program in which Ms. Jones participated during the 2000-2001 school year is a program for new teachers in the District which includes assessments involving at least two classroom visits a week. Six "domains" are covered in the program including classroom management, instructional planning and testing, some of which are presented in a workshop format. The program requires a year to complete, at the end of which the principal must assess whether a new teacher has passed or failed in her participation in the program.

4. For the 2000-2001 school year Ms. Jones accepted a position as a full-time, third grade teacher at the Annie R. Morgan Elementary School. The principal that year was Delores Milton. After about five weeks, Ms. Jones was shifted to an ESE class, an area in which she had no training. Later that year she was assigned to an EMH class which she was even less qualified to handle in terms of having any specific training in teaching and disciplining EMH students. Ms. Jones, indeed, had serious reservations about taking the EMH job because of her

lack of training or experience with EMH children and she related this to her principal and they had a discussion about it. Ultimately, the principal assured her that she could go to workshops and in other ways get additional training and so Ms. Jones accepted the position because it would guarantee her a position so that she would not be on the "surplus list" (being first subject to lay-offs).

5. Carolyn F. Davis was assigned as Principal at Annie R. Morgan Elementary School on July 1, 2001, replacing Ms. Milton. Ms. Jones' EMH teaching assignment continued into the new 2001-2002 school year. Her class included twelve boys and two girls ranging in advancement from grade one to grade three. A teacher's assistant was assigned to her on a full time basis. The teacher's assistant, at the beginning of the year, was Tiffany Bullard. Ms. Bullard had been working with Ms. Jones as a teaching assistant the prior school year from approximately November 2000 through the end of the school year in May 2001. That had been her first experience as a teacher's assistant. Due to budgetary cuts, Ms. Bullard was "surplused" (laid-off) on September 4, 2001. Several months later she was re-hired at a different school.

6. A second teacher's assistant worked with Ms. Jones in her classroom after Ms. Bullard departed. This was Arnette Felton. Ms. Felton had a year's prior experience as a teacher's

assistant at an elementary school as well as a prior year of such experience at Annie R. Morgan Elementary School. She worked with Ms. Jones from September 5, through October 16, 2001. She asked to be relieved when she claimed that Ms. Jones threw a bottle of "white-out" at a student who ducked, such that the bottle hit Ms. Felton. The totality of the credible testimony reveals that this incident did not happen at, least in that fashion, as Ms. Jones never intentionally threw a bottle of white-out at anyone. In reality, there appears to have been some personal friction between Ms. Felton and Ms. Jones which helped to cause Ms. Felton's departure.

7. Ms. Jones' third teacher's assistant was Brenda Medlock. Ms. Medlock has approximately one year and a half of college and had been serving as a teacher's assistant for ten years in the Duval County School system. She remained with Ms. Jones until Ms. Jones was removed from her teaching duties on or about November 19, 2001. Ms. Medlock had no prior experience with EMH students although she had worked with ESE students and had some training of unknown amount and duration in behavior management while working as a teacher's assistant at a prior school.

8. The EMH students in Ms. Jones class were all students with below average I.Q. who function at grade levels

significantly below the norm for their age. Their I.Q. range was from 49 to 69.

9. Greater patience is required in disciplining and instructing EMH students. Relevant federal law protects them from being disciplined for reasons of their disability. In all instances with respect to such students, a determination has to be made concerning whether the conduct for which discipline is about to be meted out is a manifestation of the disability, and if so, there can be no discipline. Some of the students had limited communication skills and difficulties with memory and Ms. Jones was aware of this information concerning her students upon getting to know them.

10. Students with a low I.Q., such as Ms. Jones' students, should not appropriately be made to write sentences repetitively as a disciplinary measure. This is because they would typically not understand and cannot practicably execute the requirement. Upon learning that Ms. Jones had made students write sentences repetitively as a disciplinary measure, Principal Carolyn Davis instructed her not to use this form of discipline at a conference the two had on October 23, 2001.

11. Student Raymond Houston testified. He was placed in the bathroom, which was in the classroom, a number of times for a few minutes as "time out" when he misbehaved. Although the light in the bathroom may have been turned off when this

occurred, no one prevented any student, being placed in the bathroom as "time out," from turning the light on. Raymond Houston (R.H.) also stated that he and several other students had to do the "duck walk" or "jumping jacks" as discipline for misbehavior on a number of occasions. He was also required to write sentences such as "I will be good" or "I will pay attention" when he had misbehaved.

12. The teacher's assistant, Ms. Bullard, confirmed that the Respondent had placed children into the classroom bathroom for "time outs." The totality of the credible testimony reveals, however, that these sessions lasted only from three to five minutes and no student had been placed in the bathroom as long as an hour or a half-day or anything of that nature.

13. Ms. Jones also made certain male students do pushups for disciplinary reasons, such as R.H. and T.S. In this connection, some of the calisthenics her students performed were done as part of a fitness program she instilled in her daily lesson plan, including the exercise regimen known as "Tae Bo." Most occasions, when students did exercises such as pushups, were not for disciplinary reasons.

14. Student R.H. also was required by the Respondent to wash at the lavatory and put on a clean shirt, which she had in the classroom to give him. This was because he had not bathed in several days and had a bad odor. While some other students

may have observed this, it was done for hygiene reasons and was not done in order to berate the student or expose him to unnecessary embarrassment.

15. During the 2001-2002 school year on one occasion, student "Shaquille's" book bag was taken from him by the Respondent and she put it in a trashcan. This was not a trashcan used for refuse or garbage, however, it was simply a trashcan type receptacle where she would keep students' book bags when they did not need them or when they were not supposed to be in possession of them.

16. Ms. Jones also instituted a system which permitted the children to go to the bathroom three times per day. This system was implemented by having the students use tokens, three apiece, which they could use when they needed to go to the bathroom. This was done to help instill order in the classroom. However, those students who were unable, for various reasons, to comply with this bathroom schedule were allowed to go on an as-needed basis. In any event, the three-bathroom-visits policy was ended by the Respondent one month into that school year.

17. All students at the Annie R. Morgan Elementary School receive a free breakfast every morning, at the beginning of the school day. Breakfast is provided in the classrooms to the students at their desks. Ms. Jones had a rigid five-minute time limit, enforced by a timer, during which the children were to

eat their breakfast. She would have the students start in unison (those that were present) and when the timer rang after five minutes, she would make the children discard any portion of breakfast not eaten. Ms. Jones was not aware that there was any prohibition against the five-minute time limit for eating breakfast and for discarding unused food. After being instructed by her principal, at their meeting of October 23, 2001, that the students should be allowed fifteen minutes for breakfast, the Respondent complied. The only exception to this, established in the record, was when student James Brown arrived at school late and missed breakfast. This, however, was involved with an agreement the Respondent had with James Brown's mother, who had informed Ms. Jones that if he were late she could assume that he had already had breakfast, because his mother would ensure that he had already breakfast. The denial of his breakfast, on the day in question, was not due to any cruelty or other violation of the rules referenced herein, but rather because she knew that his mother would have already given him breakfast on that day when he was late.

18. Although the Respondent was accused by witness Arnette Felton of throwing objects in the classroom at students, including pencils, chalk, an eraser and a white-out bottle, the preponderant, credible testimony indicates otherwise. Although the Respondent acknowledged tossing snacks, candy, chalk or

pencils to students for them to use during the course of their classroom activities, she never purposely and forcefully threw any object at students in anger or as a misguided disciplinary measure or anything of the sort. Further, although as a classroom management technique the Respondent placed students in time-out in the restroom for a few minutes when she felt it necessary to restore order and decorum in the classroom, she never instructed her assistant to forcibly hold the bathroom door shut to "lock-in" a student for disciplinary reasons.

19. Ms. Felton maintained that she observed Kenny Brown come to Ms. Jones' desk, when told not to, so that Ms. Jones, in anger, threw his book bag in the trash, took his folder out of the book bag and threw it in the sink, getting it wet.

20. The most credible testimony does not support that assertion. It is determined this incident did not occur in this fashion. Rather, Ms. Jones, at most, took student K.B.'s book bag from him and placed it in the receptacle for holding book bags, which happened to be in the form of a trashcan, but which was not used as a trash or garbage can, as found in the other instance referenced above.

21. It is true that Ms. Jones criticized Ms. Felton when she was unable to change a CD disc, calling her a "dummy." This was not done in a way that the other persons or students present in the classroom could hear, however. It is also true that

Ms. Jones and Mr. Felton got into a verbal altercation in the classroom for which the Respondent, Ms. Jones, received a reprimand from the principal, Ms. Davis, for engaging in an argument in front of the students.

22. Teacher's assistant Brenda Medlock succeeded Ms. Felton as the teaching assistant for the Respondent. She observed James Brown arrive at school, missing breakfast, on October 29, 2001, which has been discussed above. Withholding breakfast may have been contrary to the principal's instruction, but in this regard it was done for a justifiable reason because, due to the understanding with the student's mother, Ms. Jones knew that he had already had breakfast when he got to school that day when he arrived at school late. Ms. Medlock also observed, on October 29, 2001, that, after the students were disruptive, the Respondent put a sentence on the board, "I will pay attention," and required all of the students to write that sentence repetitively for approximately fifteen to twenty-five minutes. Some of the students had the ability to write the sentence only a few times or only once. This episode was in violation of instructions given by the principal at the meeting she had with the Respondent on October 23, 2001.

23. The principal had a conference with Ms. Jones on October 23, 2001, in which Ms. Jones admitted that she had placed students in the bathroom for time-out for disciplinary

purposes and that she had given children only five minutes in which to eat breakfast. She was informed that fifteen minutes were allowed for eating breakfast and she was directed not to use the bathroom for time-out disciplinary purposes anymore. She refrained from doing so thereafter. She was also directed not to withhold food from a child which she complied with thereafter, with the exception of the James Brown breakfast episode, which was adequately explained by the Respondent to not involve any disciplinary or disparagement reason for its occurrence. Ms. Jones did, as found above, violate the instruction from Ms. Davis about not requiring students to write sentences repetitively, as a disciplinary measure, by the incident she caused on October 29, 2001, found above.

24. In summary, it is significant that the only sources of factual information are the testimony of the teacher's assistants who were assigned to the Respondent during the 2001-2002 school year. An analysis of their testimony shows that none of them had any affection for the Respondent and it appears from examination of their testimony, and the Respondent's testimony, that each had specific reasons for harboring resentment or animosity toward the Respondent. Their attitudes towards the Respondent appeared less than friendly, so that their testimony, taken together, with the instances of admissions by the Respondent show that some of the situations

described happened, but did not happen in the heinous way described in the testimony of the teacher's assistants Ms. Felton and Ms. Medlock.

25. Although some of these situations, which occurred as part of the Respondent's attempt to properly deal with her classroom environment, may have justifiably resulted in criticism of the Respondent, the statement of the Petitioner's own witnesses show that there was no formal standard and no formal definition of acceptable versus unacceptable conduct imparted to the Respondent before she embarked on her duties with this EMH class. The Petitioner's representatives acknowledge that there was no advance training or instruction given to the Respondent. The Respondent was required to seek assistance and additional training largely on her own initiative with little support from the school administration.

26. Consequently, as the Respondent attempted to develop techniques for the management of her classroom and for the instruction of her students, numerous events occurred that were later deemed inappropriate, although she had not been instructed in advance that they were inappropriate. Some of these occurrences or events were due to poor judgment on her part as well, and the resentment occasioned in her teacher's assistants or "para-professionals" was probably partly the result of her own failure to adequately control her temper on occasions.

27. However, the fact remains that as soon as the Respondent was notified of any perceived inappropriate behavior, or classroom or student management techniques, she modified her conduct or techniques accordingly, so as to comply with those instructions. The only time she continued behavior that had been deemed unacceptable by the principal concerned the subject of the breakfast of one student, for whom she had a specific instruction from the student's parent that the student did not need to have breakfast when he arrived late, because he would already have had breakfast. The other occasion of continued behavior that was unacceptable was the single, October 29, 2001, requirement of students to write repetitive sentences, which was directly contrary to the instructions she received from the principal on October 23, 2001.

28. Since the only complaints were made to the administration by the paraprofessionals and the investigation therefore concentrated on those individual's statements, there is no substantial, credible evidence that the Respondent's actions rose to the level of intentional embarrassment or disparagement of students or otherwise constituted a breach of the Code of Ethics for educators, as embodied in the rules on which the Respondent's termination was based. Although the Respondent's actions were mis-directed in several instances and constituted exhibitions of poor judgment on some occasions, they

have not risen to the level of a violation of the ethical requirements imposed on teachers.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Sections 120.569 and 120.57(1), Florida Statutes (2001).

30. The Petitioner/Agency is charged with proof of its allegations by a preponderance of the evidence in order to terminate the employment status of the Respondent. See Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. 3rd DCA 1990); and Dileo v. School Board of Dade County, 569 SO. 2d 883 (Fla. 3rd DCA 1990).

31. Rule 6B-1.006, Florida Administrative Code, establishes the "Principles of Professional Conduct for the Education Profession of Florida." Rule 6B-1.006(3)(a)(e), Florida Administrative Code, establishes the following relevant obligations which teachers owe to students:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the students mental and/or physical health and/or safety

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement. (emphasis supplied).

32. Concerning paragraph (a) of the Rule quoted above it is determined that, based upon the most credible testimony and evidence, that which has preponderant weight, that the Respondent did not violate this Rule. She generally made reasonable efforts to protect children from conditions harmful to learning or their mental or physical health and safety. In several instances, she used classroom management or student management techniques which were not the most appropriate and which, to some extent, evidenced a misguided approach or poor judgment. However, her efforts to manage her class were for a beneficial purpose in trying to instill sufficient discipline in her students so that they could learn. The lapses of proper judgment in managing her class and some students, on isolated occasions, are not sufficiently reprehensible to rise to the level of a violation of the ethical standards or principles of professional conduct represented in this rule.

33. Likewise, there is not preponderant, credible evidence to show that she intentionally exposed any students to unnecessary embarrassment or disparagement. Her techniques or methods of student management or classroom management might have been done differently in some instances which in one or two instances might have been a more clear effort to avoid embarrassment of a student, but she never intentionally exposed students to embarrassment or disparagement. She consistently

corrected her management techniques or method of classroom operation in those particulars to which she was instructed. The instances of October 29, 2001, concerning repetitive writing of sentences by students after being instructed not to do so by her principal certainly were a violation of the policy laid down by that principal and would warrant some disciplinary measure; however they do not constitute violations of the Rules under which the Board is proceeding, but rather school policy. Even in those instances, and in the others which the School Board had deemed constituted inappropriate teaching or classroom or student management techniques, her conduct does not engender good cause for her termination from employment. Rather, some lesser disciplinary measure is warranted, but more importantly, instruction in the proper, more acceptable techniques for such instructional efforts should have been given. Much of the conduct or techniques used by the Respondent, with which the School Board now differs, or to which it objects, arose to a great degree from the fact that she never received proper training for the position she was placed in during the course of the school year through a change in classes involving teaching EMH students. Further, she cautioned the principal that she did not feel that she was qualified to handle such a class and was persuaded by the principal that she could do so if she sought the opportunity to receive training through workshops and by

other means. She did make the effort to receive such additional training, but was largely left to her own devices in how to do so, with little support from her school administration. Consequently, it must be concluded that while her techniques were not always the most appropriate, they did not rise to the level of ethical violations and specifically violations of the Rules under which the School Board is proceeding in this case. Consequently, while the School Board may choose not to enter into a new employment contract with the Respondent, she should be made whole for the remainder of the school year in which she would have been employed after her termination date because just cause has not been established, by preponderant evidence, justifying her termination.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the School Board of Duval County compensating the Respondent for the salary and benefits to which she is entitled from the date of her termination of employment (suspension without pay) forward to the end of the 2001-2002 School Year.

DONE AND ENTERED this 14th day of November, 2002, in
Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with Clerk of the
Division of Administrative Hearings
this 14th day of November, 2002.

COPIES FURNISHED:

David A. Hertz, Esquire
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, Florida 32207

Ernst D. Mueller, Esquire
City of Jacksonville
Office of the General Counsel
117 West Duval Street
Suite 480
Jacksonville, Florida 32202

John C. Fryer, Jr., Superintendent
Duval County School Board
1701 Prudential Drive
Jacksonville, Florida 32207-8182

Honorable Charlie Crist
Commissioner of Education
The Capitol, Plaza Level 08
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.