STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NASSAU COUNTY SCHOOL DISTRICT,	)	
Petitioner,	)	
vs.	)	Case No. 04-1592
KAREN HANNA,	)	
Respondent.	)	

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Fernandina Beach, Florida, on October 21, 2004.

APPEARANCES

For Petitioner: Brian T. Hayes
Brian T. Hayes, P.A.
247 North Jefferson Street
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Monticello, Florida 32344

For Respondent: John Joseph Cascone
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STATEMENT OF THE ISSUE

The issue is whether Petitioner may terminate Respondent's teaching contract for gross insubordination, in violation of Section 1012.33(1)(a), Florida Statutes, and Florida Administrative Code Rule 6B-4.009(4), or incompetency in the

form of a lack of emotional stability, in violation of Section 1012.33(1)(a), Florida Statutes, and Florida Administrative Code Rule 6B-4.009(1)(b)(1).

PRELIMINARY STATEMENT

By Recommendation of Superintendent: Request to Transfer Hearing dated April 22, 2004, Petitioner's Superintendent recommended to Petitioner School Board that it terminate Respondent's employment on the grounds that she had acted so as to impair her effectiveness as an employee of the School Board, failed to discharge her duties due to inefficiency or incapacity, and acted insubordinately.

By Pre-Hearing Stipulation filed August 6, 2004, Petitioner agreed that the issues remaining to be litigated were incapacity and insubordination, as these terms are defined in Florida Administrative Code Rule 6B-4.009(1) and (4), respectively. During opening statement, Petitioner's counsel restated his intention to proceed on these two issues exclusively.

At the hearing, Petitioner called four witnesses and offered into evidence eight exhibits: Petitioner Exhibits 1-8. Respondent called one witness and offered into evidence two exhibits: Respondent Exhibits 1-2. The parties jointly offered one exhibit: Joint Exhibit 1. All exhibits were admitted.

The court reporter filed the transcript on March 7, 2005. Petitioner filed its Proposed Recommended Order on March 2,

2005. Respondent filed her Proposed Recommended Order on January 12, 2005.

FINDINGS OF FACT

1. Respondent has been employed by Petitioner as a teacher for 14 years. During the 2003-04 school year, Respondent taught first grade at Southside Elementary School, where she has taught for many years.

2. On Wednesday, October 1, 2003, Respondent entered the school cafeteria to pick up her students. As she entered the cafeteria, she met Susan Ross, the school guidance counselor. Ms. Ross informed Respondent that she had seen one of Respondent's male students put his hand on the chair seat of another boy, who was about to sit down, evidently in an attempt to grab the buttocks or genital region of the boy as he sat down.

3. Respondent replied that one of her students had reported that, a few weeks previously, the same male student, while in the boys' restroom, either had pulled another boy's pants down or had tugged at the waistband of another boy's pants. Respondent had never been able to ascertain exactly what, if anything, had happened in the restroom that day because she had not been present and the child told her different versions of the events.

4. At the time of the conversation with Ms. Ross, Respondent viewed the male student's misbehavior as horseplay, not sexual abuse. Obviously, Ms. Ross did not interpret the cafeteria incident that she had witnessed as sexual abuse, or else she would have reported it to the principal and the authorities.

5. At the conclusion of her brief conversation with Ms. Ross, Respondent told Ms. Ross that Respondent would discuss the student's misbehavior with his mother, with whom Respondent had a good relationship, and the mother would help bring the misbehavior to end. Ms. Ross said nothing in response.

6. Later on the same day of the cafeteria incident, Ms. Ross summoned Respondent to Ms. Ross's office. Ms. Ross told Respondent that she could not talk to the student's mother because she "might be in on it," meaning that the mother might be part of some sexual abuse that the child was acting out. Ms. Ross informed Respondent that she needed to report the student's actions because he was perpetrating sexual abuse on another child.

7. At about this point in the conversation, Diana Middleton, who was then in her second year as principal of Southside Elementary School, entered Ms. Ross's office and joined the conversation. Ms. Ross repeated her belief that Respondent was obligated to call the authorities--specifically,

the Department of Children and Family Services' child abuse hotline. Ms. Middleton agreed with Ms. Ross and told Respondent that a teacher had a duty to call the Department of Children and Family Services when a child showed the behavior that the male student had shown. Stating that it was not Respondent's job to determine the truth of a child's statement, Ms. Middleton twice directed Respondent to call the child abuse hotline, and she directed her to make a student disciplinary referral and intervention team referral.

8. By these directives, Ms. Middleton implied that the student was or might be a perpetrator of sexual abuse, rather than a victim of sexual abuse. Logically, if Ms. Middleton had believed the child to be a victim of child abuse, she would not have directed Respondent to complete a disciplinary referral, which is punitive in nature.

9. However, Respondent continued to believe that the child's behavior was nothing more than horseplay, and she continued to believe that the mother's intervention was the logical and appropriate first step in dealing with this misbehavior. Respondent also believed that Ms. Middleton and Ms. Ross were overreacting and basing their opinions upon incomplete or inaccurate information.

10. Respondent considered her options and elected to compromise by taking the recommendation of the principal to

complete the intervention team referral form. She completed the intervention team referral form by checking eight boxes, including "impulsive," "inappropriate sexual behavior," "hyperactive," and "daydreams." Respondent stated as the reason for the referral: "inappropriate sexual advances: grabbing 'private' areas, pulled down another student's pants in the bathroom."

11. The intervention team referral emphasizes maladaptive behavior, characteristics, and attitudes, such as "loneliness," "fearful," and "immature," rather than outright misbehavior, which is more directly addressed by a disciplinary referral. In completing an intervention team referral form, a teacher or administrator describing the behaviors justifying the intervention does not need to engage in the kind of factfinding that typically precedes the imposition of discipline because the purpose of the intervention team referral is to find additional resources to help a child, not to punish a child or to deter future misbehavior.

12. Over the next couple of days, Ms. Middleton became frustrated with Respondent's passive resistance, rather than outright defiance. By Friday, October 3, 2003, someone else at the school called the child abuse hotline and reported the student as a perpetrator of sexual abuse, based on the alleged restroom incident and possibly the cafeteria incident, as well.

By the start of school on Monday, October 6, 2003, the student's mother visited the school after having learned of the abuse report. The mother demanded that Ms. Middleton transfer her child to another classroom immediately, and Ms. Middleton did so.

13. Later in the afternoon of the same day, a child protective investigator from the Department of Children and Family Services visited the school and interviewed Ms. Middleton and Respondent. Respondent gave a statement that corresponds to the facts set forth above.

14. At this point, Ms. Middleton's dissatisfaction with Respondent's performance intensified. Already unhappy with Respondent's failure to call the child abuse hotline, Ms. Middleton now believed that Respondent falsely understated the facts to the investigator, as compared to the facts stated by Respondent in the intervention team referral form described above.

15. It is difficult to justify Ms. Middleton's conclusion that, essentially, Respondent had lied to the investigator. As noted above, the different levels of exactitude appropriate to the intervention form and the statement to a child abuse investigator could account for what little discrepancy--and it is only one of emphasis--between the narrative in the intervention form and Respondent's testimony, which presumably

tracks her statement to the investigator. For some reason, as these events were unfolding, Ms. Middleton discredited Respondent's ability to evaluate the source of the alleged restroom incident, although Ms. Middleton admitted at the hearing that Respondent had the responsibility of sorting out the alleged restroom incident to determine whether the male student was guilty of any misbehavior that required reporting to the authorities. Obviously, Ms. Middleton could not reasonably have expected Respondent to report the cafeteria incident, which was witnessed by Ms. Middleton's guidance counselor, not Respondent.

16. Unfortunately, the situation deteriorated. A local television station eventually picked up the story and tried unsuccessfully to interview Respondent. An unidentified person then called Petitioner's Superintendent and reported that Respondent was contemplating suicide. The Superintendent responded by alerting the police, who dispatched uniformed officers to Respondent's home. The police offered Respondent the alternative of arrest or involuntary hospitalization, and she chose the latter.

17. After a short time at a local hospital, where Respondent refused medication, Respondent was transferred that evening to Baptist Hospital in Jacksonville. The next morning, a psychiatrist examined Respondent and, finding no psychiatric

basis for an involuntary commitment, changed Respondent's status to voluntary and released her. Evidently in deference to the stress of the prior evening, the psychiatrist wrote Respondent a letter excusing her from work for a week. He later wrote a letter saying that she was able to return to work.

18. The record discloses nothing about any problems or emotional instability that Respondent ever exhibited in the classroom or at school. However, by letter dated January 15, 2004, Respondent's Superintendent demanded, among other things, "[i]nformation relating to your medical condition and/or status at admission and upon your release." Although the Superintendent's letter claimed to be concerned with Respondent's emotional condition and her ability to return to work, most of the items demanded by the Superintendent in this letter pertained to Respondent's involvement in the above-described incidents of early October 2003. Specifically, he demanded information about allegations that Respondent had shared confidential information with the male student's parent, her response to the local television station's coverage of the incident and her letter to the local newspaper that she had been coerced by the school administration to complete the intervention team referral form, her accounting of discrepancies between the information on the intervention team referral form and her statement to the child protective investigator, and a

description of her reaction to being told by Ms. Middleton that her work was unsatisfactory. The letter suspends Respondent, with pay, retroactive to January 5, 2004.

19. In his opening statement, Petitioner's counsel predicated the charge of insubordination on Respondent's refusal to file an abuse report and refusal to provide the Superintendent with the medical information that he had demanded. As for Respondent's refusal to supply her medical records to the Superintendent, Petitioner relies on its Rule 3.04(II) for authorizing the Superintendent to demand these documents.

20. However, this rule authorizes Respondent's School Board to require medical or psychiatric examinations when claimed necessary by the Superintendent, and the rule does not give even the School Board the authority to demand records from other examinations. While testifying, the Superintendent admitted as much and disclaimed any reliance, as to the charge of gross insubordination, upon Respondent's refusal to supply him the medical records from her evening at Baptist Hospital.

21. As for Respondent's refusal to file a child abuse report, Ms. Middleton's directive to do so was unreasonable. Ms. Middleton herself acknowledges that a teacher must sort out the facts before filing a child abuse report. Respondent did so in this case and determined that the incident did not constitute

a reportable matter. Her determination was factually reasonable, especially given the requirements of the statute governing reports of child abuse, as discussed below.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2004).

23. Section 1012.33(1)(a), Florida Statutes, provides that teacher employment contracts shall provide for termination for "just cause," which includes "gross insubordination" and "incompetency," as these terms are defined in the rules.

24. Florida Administrative Code Rule 6B-4.009 provides, in relevant part:

> The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes [former statute]. The basis for each of such charges is hereby defined:
>
> (1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. Since incompetency is a relative term, an authoritative decision in an individual case may be made on the basis of testimony by members of a panel of expert witnesses appropriately appointed from the teaching profession by the Commissioner of Education. Such judgment shall be based on a preponderance of evidence showing the existence of one (1) or more of the following:

* * *

> (b) Incapacity: (1) lack of emotional stability; (2) lack of adequate physical ability; (3) lack of general educational background; or (4) lack of adequate command of his or her area of specialization.

* * *

> (4) Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

25. Petitioner has the burden of proving the material allegations by a preponderance of the evidence. See, e.g., Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. 3d DCA 1990).

26. Petitioner attempted to prove incompetency by incapacity--specifically, lack of emotional stability. However, the record contains no evidence whatsoever that Respondent lacks emotional stability.

27. Petitioner also attempted to prove gross insubordination, but the record shows that the demands imposed on Respondent by the Superintendent and principal were unreasonable or unauthorized.

28. As he conceded, the Superintendent lacked the authority to demand for Respondent's medical records, so his demand was not reasonable, nor was it given by someone with proper authority to demand Respondent's medical records.

Respondent's refusal to supply these records thus could not and did not constitute gross insubordination.

29. Regardless whether the principal had the authority to order that Respondent file a child abuse report, the order in this case was unauthorized and unreasonable. Factually, the principal was unaware of the shaky factual basis for the alleged restroom incident and admitted that, had she been aware of this fact, she would not have directed Respondent to file a child abuse report. Respondent reasonably determined that she had no factual basis for filing a report, and the principal's order to file one was unreasonable under the circumstances.

30. Legally, the principal's order, which was based on her suspicion that the male student was a perpetrator, not victim, of child abuse, was unauthorized by the statute and, thus, unreasonable. No witness testified to a belief, now or then, that the male student was a victim of abuse and perhaps acting out sexually with other students. As a matter of law, a first-grade child cannot be a perpetrator of child abuse. Section 39.201(1)(a), Florida Statutes, provides, in relevant part:

> Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the [Department of Children and Family Services . . ..

31. A first-grade child is not a caregiver or a person otherwise responsible for the welfare of one of his fellow first-grade students. Apparently, the principal relied on a School Board rule that was, according to the principal and Superintendent, intended to track the statute, but unfortunately fails to include the restrictive language as to the class of potential perpetrators.

RECOMMENDATION

It is

RECOMMENDED that the Nassau County School Board enter a final order dismissing the proceeding against Respondent to terminate her employment contract.

DONE AND ENTERED this 24th day of March, 2005, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 24th day of March, 2005.

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 must be filed with the agency that will issue the final order in this case.